

# General Conditions

There are three parts to this agreement.

The first sets out the facility details (the Facility Letter).

The second sets out the General Conditions. These are the conditions that apply to your facility.

The third sets out the guidelines applicable to the Program (the Guidelines).

You should also read the terms and conditions of any Securities.

Version: 7

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## General Conditions

### 1 Definitions and interpretation

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#### 1.1 Definitions

In the Facility Documents:

<b>Term</b>	<b>Definition</b>
<b>Advance</b>	means the cash advance made by the Authority to the Borrower under clause 2.
<b>ASX</b>	means ASX Limited ACN 008 624 691.
<b>Authorisation</b>	includes a consent, authorisation, approval, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption.
<b>Authorised Officer</b>	means as it relates to: (a) the Borrower, that is a corporation any director or secretary and any person whose title includes the word 'manager'; and (b) the Authority, any person whose title is General Manager Program Delivery or any such person nominated by the Authority from time to time, and also includes a party's lawyer.
<b>Authority</b>	means the Queensland Rural and Industry Development Authority, a body corporate constituted pursuant to the <i>Rural and Regional Adjustment Act 1994</i> (Qld).
<b>Bankruptcy Act</b>	means the <i>Bankruptcy Act 1966</i> (Cth).
<b>Borrower</b>	means the party nominated as Borrower in Item 1 of the Facility Letter.
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday being a day on which banks are open for general banking business in Brisbane.
<b>Corporations Act</b>	means <i>Corporations Act 2001</i> (Cth).
<b>Commencement Date</b>	means the date on which the Advance is made.
<b>Directive</b>	includes any present or future directive, regulation, request, requirement, rule or credit restraint programme of any public authority or of any self-regulating organisation (but, if not having the force of law, only if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is intended to apply).
<b>Encumbrance</b>	means: (a) any Security Interest or a preferential or adverse interest of any kind; (b) any mortgage, charge, pledge or lien, and any security interest or a preferential or adverse interest of any kind; (c) a title retention arrangement (other than a retention of title in the ordinary course of ordinary business); (d) a right of any person to purchase, occupy or use assets

Term	Definition
	(including under a hire purchase agreement, option, licence, lease, or agreement to purchase);
	(e) a right to set-off or right to withhold payment of a deposit or other money;
	(f) an easement, restrictive covenant, caveat or similar restriction over property (except, in the case of land, a covenant noted on the certificate of title to the land concerned);
	(g) an agreement to create any of the items referred to in paragraphs (a) to (e) above or to allow any of those items to exist;
	(h) a notice under section 255 <i>Tax Act (1936)</i> (Cth), subdivision 260-A in schedule 1 <i>Taxation Administration Act 1953</i> (Cth) or any similar legislation; or
	(i) any other right (including without limitation under a trust or agency arrangement) of a creditor to have its claims satisfied prior to other creditors with, or from the proceeds of, or be recourse to any asset and includes any agreement, arrangement or deed conferring such a right.
<b>Event of Default</b>	has the meaning set out in clauses 14.1 and 20.2.
<b>Facility</b>	means the loan facility agreed to be given by the Authority to the Borrower under this document and the Facility Letter.
<b>Facility Documents</b>	means the Facility Letter, this document and any Security.
<b>Facility Letter</b>	means the letter from the Authority to the Borrower offering Financial Accommodation.
<b>Facility Limit</b>	means the amount set out in Item 2 of the Facility Letter.
<b>Financial Accommodation</b>	means any financial accommodation or form of financial accommodation including, without limitation: <ul style="list-style-type: none"> <li>(a) an advance, loan, forbearance, or payment;</li> <li>(b) a deferred purchase price, other than for goods or services provided on normal commercial terms in the ordinary course of trading and the deferral is for less than 90 days;</li> <li>(c) discounting, or drawing, accepting, endorsing, or becoming in any other way liable under, a bill, cheque, promissory note, warrant or other negotiable instrument at the request of, on behalf of, or for the benefit of another party;</li> <li>(d) giving or allowing credit;</li> <li>(e) giving or paying money under a Guarantee; and</li> <li>(f) providing financial accommodation by way of: <ul style="list-style-type: none"> <li>(i) entering into or performing a Lease;</li> <li>(ii) purchasing, or giving value for a right or asset; or</li> <li>(iii) creating, assuming or undertaking a liability.</li> </ul> </li> </ul>
<b>Financial Indebtedness</b>	means indebtedness, whether present or future, secured or unsecured, or actual or contingent arising under, relating to, or as a result of any Financial Accommodation. This does not include the deferred purchase price for any goods or services that have been obtained on normal commercial terms in the ordinary

<b>Term</b>	<b>Definition</b>
	course of trading and the deferral is for less than 90 days.
<b>Force Majeure</b>	includes fire, storm, flood, earthquake, explosion, accident, war, act of a public enemy, rebellion, insurrection, sabotage, epidemic, labour dispute, electrical failure, telecommunications failure and an act of God.
<b>Government Agency</b>	means: <ul style="list-style-type: none"> <li>(a) a government or government department or other body;</li> <li>(b) a government, semi-governmental or judicial person; or</li> <li>(c) a person (whether autonomous or not) who is charged with the administration of a law.</li> </ul>
<b>GST</b>	has the meaning given to that term in the GST Act.
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)
<b>Guarantee</b>	means a guarantee, indemnity, letter of credit, letter of comfort giving rise to legal liabilities, or any other obligation whatever called and of whatever nature: <ul style="list-style-type: none"> <li>(a) to pay, to purchase, or to provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services, or otherwise) for the payment or discharge of;</li> <li>(b) to indemnify against the consequences of default in the payment of; or</li> <li>(c) otherwise to be responsible for;</li> </ul> any obligation or indebtedness of any other person.
<b>Insolvency Event</b>	means any of the following events: <ul style="list-style-type: none"> <li>(a) if: <ul style="list-style-type: none"> <li>(i) an application is filed for the winding up of the party; or</li> <li>(ii) an order is made for the winding up of the party;</li> </ul> </li> <li>(b) if the party's shareholders pass a resolution for its winding up;</li> <li>(c) if a receiver, receiver and manager, controller (as defined in section 9 Corporations Act), or similar person is appointed to, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of the party;</li> <li>(d) if a provisional liquidator is appointed to the party;</li> <li>(e) if: <ul style="list-style-type: none"> <li>(i) the party is placed into administration (as defined in section 9 Corporations Act) or enters into a deed of company arrangement (as defined in section 9 Corporations Act); or</li> <li>(ii) the party, or any other person takes any step towards placing the party into administration or towards entering into a deed of company arrangement;</li> </ul> </li> <li>(f) if the party: <ul style="list-style-type: none"> <li>(i) advises the other party that it is financially unable to proceed with or meet any of its obligations</li> </ul> </li> </ul>

Term	Definition
	under this document and the Facility Letter;
(ii)	without the written consent (not to be unreasonably withheld) of the other party, suspends payment of its debts other than as the result of a failure to pay a debt or claim which is the subject of a genuine dispute;
(iii)	ceases or threatens to cease to carry on all or a material part of its business;
(iv)	is or states that it is unable to pay its debts as and when they fall due and payable; or
(v)	is taken to fail to comply with a statutory demand under section 459F Corporations Act;
(g)	if the party, without the consent of the other party:
(i)	begins negotiations with one or more of its creditors seeking a general readjustment or rescheduling of its indebtedness to one or more of its creditors;
(ii)	takes any steps toward entering into, or enters into, any compromise or arrangement with one or more of its creditors under part 5.1 Corporations Act; or
(iii)	makes any assignment or enters into any arrangement or composition generally for the benefit of one or more of its creditors;
(h)	if the party:
(i)	commits an act of bankruptcy under section 40 Bankruptcy Act; or
(ii)	is made bankrupt;
(i)	if the party becomes or takes any step that could result in the party becoming an insolvent under administration (as defined in section 9 Corporations Act); or
(j)	if the party enters into or takes any step that could result in the party entering into a personal insolvency agreement under part X Bankruptcy Act;
(k)	if the party enters into or takes any step that could result in the party entering into a debt agreement under part IX Bankruptcy Act;
(l)	if execution is levied against the party by a creditor;
(m)	if any matter relating to the party becomes subject to a direction under, or has effect as if it were a direction under, section 14 <i>Australian Securities Commission and Investment Act 2001</i> (Cth), or to an investigation under, or taken to be under, <i>Australian Securities and Investment Commission Act 2001</i> (Cth); or
(n)	if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition, unless:
(i)	the event takes place as part of a solvent reconstruction, amalgamation, merger or consolidation on terms approved by the other party before it takes place; and

<b>Term</b>	<b>Definition</b>
	(ii) the implementation of the reconstruction, amalgamation, merger or consolidation complies with the terms of the approval.
<b>Interest Period</b>	means an interest period as set out in Item 6 of the Facility Letter.
<b>Interest Only Period</b>	means the period defined in Item 8 of the Facility Letter during which the repayments required will represent interest only and will be set out (if applicable) in Item 9 of the Facility Letter.
<b>Interest Rate</b>	means the rate set out in Item 5 of the Facility Letter.
<b>Lease</b>	means an agreement or arrangement under which property is or may be used, occupied, retained, operated or managed by a Lessee for consideration (of whatever form) payable or given by the Lessee including a lease, licence, charter, hire purchase or hiring arrangement.
<b>Lessee</b>	means a person who uses, occupies, retains, operates or manages property under a Lease.
<b>Material Adverse Effect</b>	<p>(a) as it relates to a person or entity, a material adverse effect:</p> <p>(i) on the person's or entity's financial condition or business; or</p> <p>(ii) on the person's or entity's ability to perform and comply with its relevant obligations under this document, the Facility Letter or any Security; and</p> <p>(b) as it relates to the Security Property, a material adverse effect on the value of that property.</p>
<b>Money Owing</b>	means on any day the aggregate of all money owing or payable actually or contingently by the Borrower to the Authority under this document, the Facility Letter or any Security.
<b>Outstanding Advance</b>	means on any day at 5.00pm, the aggregate amount of the Advance less the aggregate of all principal repayments of the Advance made by the Borrower.
<b>Potential Event of Default</b>	means any condition, act or event which, with the giving of any notice, the lapse of any period of time or the fulfilment of any requirement or any combination of these things could become an Event of Default.
<b>PPSA</b>	means <i>Personal Property Securities Act 2009</i> (Cth).
<b>PPSA Information</b>	means any information or documents (including copies of such documents), which are in existence or may be entered into in the future, of the kind mentioned in section 275(1) PPSA.
<b>Program</b>	means the assistance program, details of which are set out in Item 3 of the Facility Letter.
<b>Receiver</b>	means any receiver or receiver and manager appointed under this document, the Facility Letter or any Security.
<b>Recipient</b>	has the meaning given to that term in the GST Act.
<b>Security</b>	means any document which at any time is entered into with or in favour of the Authority to secure all or some of the Money Owing, including each document set out in Item 10 of the Facility Letter.
<b>Security Interest</b>	means an Encumbrance that secures the payment of money or the performance of an obligation, or any other interest or

<b>Term</b>	<b>Definition</b>
	arrangement, including a 'security interest' as that term is defined in section 12 PPSA.
<b>Security Property</b>	means any property of any nature which is or will be subject to an Encumbrance under any Security.
<b>Subsidiary</b>	has the meaning given to that term by section 9 Corporations Act.
<b>Supplier</b>	means the entity making the Supply.
<b>Supply</b>	has the meaning given to that term in the GST Act.
<b>Tax</b>	includes any tax, levy, duty, charge, impost, fee, deduction and withholding however it is described, that is assessed, levied, collected or imposed by law or by a Government Agency, together with any related interest penalty, fine or other charge, or other amount imposed in respect of any of the above.
<b>Tax Act (1936)</b>	means Income Tax Assessment Act 1936 (Cth).
<b>Tax Act (1997)</b>	means Income Tax Assessment Act 1997 (Cth).
<b>Tax Invoice</b>	has the meaning given to that term in the GST Act.
<b>Taxable Supply</b>	has the meaning given to that term in the GST Act.
<b>Term</b>	means the term set out in Item 7 of the Facility Letter.
<b>Termination Date</b>	means the last date of the Term.
<b>Trust</b>	means the trust (if any) by which the Borrower enters into a Facility Document, whether or not that trust is set out expressly in a Facility Document.

## 1.2 Interpretation

In the Facility Documents:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other genders;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and the Facility Letter and references to this document and the Facility Letter include any schedules or annexures to either one of them;
- (d) a reference to a party includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;

- (g) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (h) if any day on or by which a person must do something under a Facility Document is not a Business Day, then the person must do it on or by the next Business Day, unless otherwise prescribed in the Facility Document;
- (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (j) a reference to 'month' means calendar month;
- (k) the Facility Documents are not to be interpreted against the interests of a party merely because that party proposed the document or some provision in it or because that party relies on a provision of the document to protect itself;
- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) a reference to '\$' or 'dollar' is to Australian currency;
- (n) a reference to time is to Brisbane time (unless otherwise agreed in writing);
- (o) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (p) if a party consists of more than one person, or a term is used to refer to more than one party:
  - (i) an obligation of those persons is joint and several; and
  - (ii) a right of those persons is held by each of them severally; and
- (q) if a party is prohibited from doing anything, that party is also prohibited from:
  - (i) allowing or causing it to be done; and
  - (ii) doing or omitting to do anything which results in it happening; and

## **2 Agreement to Advance**

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The Authority agrees to make a cash advance to the Borrower for an amount equal to the Facility Limit on the terms of the Facility Documents and the Program.

### **3 Purpose**

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#### **3.1 Approved purpose**

The Borrower must use the Facility for the purpose set out in the Facility Letter or any other purpose as the Authority may from time to time approve.

#### **3.2 Evidence of purpose**

The Borrower must produce to the Authority on demand any evidence the Authority requires to determine or verify the purpose for which the Advance is or has been applied.

### **4 Conditions to Advance and securities**

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The Authority does not need to make any Advance or proposed Advance if:

- (a) the Borrower has not delivered to the Authority:
  - (i) each Security signed in a legally binding manner, in registrable form (where applicable), prepared by the Authority or its solicitors and containing terms the Authority requires;
  - (ii) satisfactory replies to all the Authority's enquiries about the Security Property or the Borrower;
  - (iii) ancillary documents to the Facility Documents which the Authority or its solicitors consider necessary; or
  - (iv) any fees the Authority requires the Borrower to pay for the giving of the Facility or for any other reason;
- (b) the Authority is not satisfied that the stated or proposed use of the Advance complies with clause 3;
- (c) any information comes to the attention of the Authority, or any event occurs (including an Event of Default or Potential Event of Default) which in the opinion of the Authority would render the making of the proposed Advance materially prejudicial to the interests of the Authority or the Program; or
- (d) any conditions precedent set out in the Facility Letter have not, in the opinion of the Authority, been satisfied.

### **5 Drawdown**

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Upon the Authority being satisfied that the conditions in clause 4 have been met, the Authority will pay the Advance to the account specified by the Borrower in its application form for the Program.

## **6 Calculation and payment of interest**

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### **6.1 Interest calculation**

For the purposes of the calculation and payment of interest, the Term is divided into consecutive Interest Periods and:

- (a) subject to the following clauses, each Interest Period is of the duration set out in Item 6 of the Facility Letter (unless varied by the Authority and notified to the Borrower in writing);
- (b) the term of each Interest Period is subject to marginal adjustment as the Authority in its discretion requires so that the last day of each Interest Period is a Business Day;
- (c) the first Interest Period will start on the Commencement Date and each subsequent Interest Period will start on the day immediately following the end of the preceding Interest Period; and
- (d) the final Interest Period will end on the Termination Date.

### **6.2 Interest accrual and payment**

Interest on the Outstanding Advance will accrue daily during each Interest Period and is calculated and payable on the last day of each Interest Period on the basis of a year of 365 days and the actual number of days elapsed.

### **6.3 Interest Rate**

During the Term, interest is payable under clause 6.2 for each Interest Period at the Interest Rate.

## **7 Interest on overdue amounts**

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### **7.1 Capitalisation of overdue interest**

The Authority may at any time capitalise overdue interest. Any interest capitalised will comprise principal and incur interest from the date of capitalisation.

### **7.2 Interest on overdue amounts**

The Authority may charge interest on overdue amounts, capitalise unpaid interest or both:

- (a) without prejudice to any other rights the Authority may have under a Facility Document;
- (b) without notice to the Borrower;
- (c) despite an Insolvency Event occurring to the Borrower; and
- (d) despite the obtaining of any judgment for any amount owing under a Facility Document.

## **8 Repayment**

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### **8.1 Money owing**

- (a) The Borrower must pay the Money Owing to the Authority in the manner set out in the Facility Letter or as agreed with the Authority in writing from time to time.
- (b) Any Money Owing on the Termination Date must be paid to the Authority in full on that date.

### **8.2 Early repayment**

The Borrower may repay the Advance in whole or in part before the Termination Date.

## **9 GST**

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### **9.1 GST exclusive**

Except under this clause, the consideration for a Supply made under or in connection with the Facility Documents does not include GST.

### **9.2 Taxable Supply**

If a Supply made under or in connection with a Facility Document is a Taxable Supply, then at or before the time the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the Facility Document for that Supply); and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

## **10 Payments**

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### **10.1 Non-Business Day**

If any payment to be made under a Facility Document would otherwise fall due on a day which is not a Business Day, then the due date for payment is the preceding Business Day.

### **10.2 How payments made**

All payments to be made by the Borrower under a Facility Document must be made:

- (a) by direct debit or as directed by the Authority at the place or into the account from time to time notified by the Authority to the Borrower;
- (b) free of any set-off or counterclaim;
- (c) free of and without deduction for or on account of any present or future Taxes; and

(d) unless otherwise agreed by the Authority, in immediately available funds.

### **10.3 Time of the essence**

Time is of the essence of the Borrower's obligations under this document, the Facility Letter and any Security.

### **10.4 Certificate**

A certificate signed by an Authorised Officer of the Authority:

- (a) stating a specified sum of money is owing under a Facility Document;
- (b) stating an Event of Default or Potential Event of Default has occurred; or
- (c) containing a statement which is relevant to any of the Authority's or Borrower's rights or obligations under a Facility Document,

is admissible in proceedings and is, except where there is manifest error, conclusive evidence of the matter stated in the certificate.

## **11 Representations and warranties**

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### **11.1 Borrower's representations and warranties**

The Borrower represents and warrants to the Authority that:

- (a) where the Borrower is a corporation, it is properly incorporated and validly existing under the laws of the place in which it is incorporated;
- (b) it has the power to enter into the Facility Documents and to do everything contemplated by the Facility Documents and all necessary action has been taken and Authorisations obtained to make sure the Facility Documents are legally binding on the Borrower and to enable the Borrower to carry out all of its obligations under the Facility Documents;
- (c) no Event of Default or Potential Event of Default has occurred;
- (d) the Borrower has not breached any laws, Encumbrance, or other legal instrument or arrangement to which it is a party or to which it is subject which may have a Material Adverse Effect on the Borrower;
- (e) no Insolvency Event has occurred with respect to the Borrower;
- (f) no litigation or other proceeding before any court, judicial or administrative authority, or arbitrator is:
  - (i) taking place or pending; or

- (ii) to the knowledge or belief of the Borrower, likely to be commenced or threatened,

against the Borrower or any of its assets which, if adversely determined, could have a Material Adverse Effect on the Borrower;

- (g) all information given by or on behalf of the Borrower to the Authority (including in any financial statements) is true and accurate and not misleading (including by omission);
- (h) the Borrower:
  - (i) has complied with all Tax laws in all jurisdictions in which it is subject to Tax;
  - (ii) has paid all Taxes due and payable by them; and
  - (iii) is not subject to any material claims with respect to Taxes;
- (i) the Borrower does not act as trustee of any trust or settlement other than as disclosed in this document and the Facility Letter or to the Authority in writing; and
- (j) no document exists affecting the operation of, or rights of the Authority under, a Security which has not previously disclosed to the Authority.

## **11.2 Security**

The representations and warranties in this clause are in addition to any other representations and warranties contained in any Security.

## **11.3 Reliance on representations and warranties**

The Borrower acknowledges that:

- (a) the Authority has incurred obligations under the Facility Documents in reliance on the representations and warranties given by the Borrower; and
- (b) the Borrower has not entered into the Facility Documents in reliance upon, and the Borrower will not rely upon, any representation, warranty, promise or statement made by the Authority or any person on the Authority's behalf at any time.

## **11.4 Liability**

The Borrower acknowledges that:

- (a) the Authority's obligations are limited to those which are expressly set out in the Facility Documents;
- (b) the Authority is not liable for any change in interest rates, currencies or exchange rates; and

- (c) the Authority is not liable for any information, advice or opinion given by the Authority or any person on behalf of the Authority about interest rates, currencies or exchange rates even if they have been given incorrectly or negligently.

## **12 Undertakings**

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### **12.1 Borrower undertakings**

The Borrower must from the date of the Facility Letter until the Money Owing is repaid in full:

- (a) where the Borrower is a corporation, maintain its corporate existence and not change its place of incorporation or its principal place of business to a place outside Australia;
- (b) comply with all laws at any time in force and all mandatory requirements of any Government Agency;
- (c) duly and punctually pay all Taxes assessed, levied or imposed upon the Borrower or upon any Security Property held in any capacity by the Borrower;
- (d) do all things necessary to ensure that no Event of Default occurs;
- (e) obtain and renew at the proper times all Authorisations required for the:
  - (i) Borrower performing or observing its obligations under the Facility Documents;
  - (ii) Authority enforcing any of its rights, powers or remedies under the Facility Documents or at law;
  - (iii) Borrower carrying on its business; and
  - (iv) Security Property;
- (f) permit the Authority or persons on the Authority's behalf access on reasonable notice to all of the Borrower's business and financial records;
- (g) not incur any Financial Indebtedness without the Authority's written consent; and
- (h) not do or allow anything to be done in derogation of the Authority's rights, powers or remedies under the Facility Documents.

### **12.2 Borrower's obligations to sign other documents**

The Borrower must promptly do all things required by the Authority to give effect to the Facility Documents and the transactions contemplated by them.

## **13 Notice and provide information**

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### **13.1 Borrower's obligation to notify**

The Borrower must notify the Authority in writing of:

- (a) every occurrence of an Event of Default or Potential Event of Default, as soon as the Borrower becomes aware of it;
- (b) every change, event or set of circumstances which would cause a repetition by the Borrower, on any day after the date of the Facility Letter, of any representation or warranty in clause 11 or in any Security to be false or misleading in any way, as soon as the Borrower becomes aware of it;
- (c) every acquisition or resumption by a Government Agency of any of the Security Property, and every proposal by a Government Agency to resume or acquire any of the Security Property, as soon as the Borrower becomes aware of it; and
- (d) the particulars and location of any Security Property, on request by the Authority.

### **13.2 Borrower's obligation to provide information**

The Borrower must:

- (a) promptly give the Authority, the Authority's employees, professional advisers and agents all information about the Borrower's business and affairs as the Authority may require from time to time;
- (b) when requested by the Authority, give the Authority as soon as they are available and, in any event, by no later than three months after the relevant annual balance dates for the Borrower's accounts, copies of the Borrower's annual profit and loss accounts and balance sheets as at the relevant balance date;
- (c) upon request, give the Authority copies of all reports, accounts, notices and circulars issued by the Borrower to their members; and
- (d) promptly give the Authority any other financial or operating information about the Borrower or any Security Property which the Authority reasonably requires from time to time.

## **14 Event of Default**

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### **14.1 Meaning of Event of Default**

Any one or more of the following events is an Event of Default:

- (a) the Borrower fails to pay or discharge the Money Owing when due;
- (b) the Borrower fails to perform or observe another obligation imposed on them by a Facility Document;
- (c) any Security or any Encumbrance created or entered into by the Borrower becomes enforceable;

- (d) an Insolvency Event occurs to the Borrower;
- (e) an execution or distress is issued or levied against the Borrower or any Security Property, and is not stayed or satisfied within seven days;
- (f) any statement, representation or warranty made to the Authority by or on behalf of the Borrower or made in a certificate, report or opinion given to the Authority and:
  - (i) which induced the Authority to enter into a Security;
  - (ii) which induced the Authority to give any Financial Accommodation; or
  - (iii) which the Authority relied on in agreeing to give or to continue to give any Financial Accommodation,

proves to be incorrect or misleading in any respect which the Authority considers to be material;

- (g) an undertaking given by or on behalf of the Borrower to the Authority or the Authority's solicitors is not complied with promptly and in accordance with its terms and, unless otherwise specified, within five Business Days of the giving of the undertaking;
- (h) a condition contained in a Facility Document (whether or not it is within the Borrower's control) is not satisfied in accordance with its terms;
- (i) any Financial Accommodation is used for a purpose other than that for which it was given;
- (j) without the Authority's written consent, the Borrower that is a corporation makes an alteration or amendment to its constitution which may, in the Authority's reasonable opinion, detrimentally affect the Authority's interests under this document, the Facility Letter or under any Security;
- (k) where, at the relevant time, the Borrower is a corporation (other than a corporation whose shares are listed by ASX or an exchange subsidiary of ASX), any one or more of the following events occurs without the Authority's written consent:
  - (i) the registration of the transfer of any share or stock;
  - (ii) a dealing with the beneficial interest in any share or stock;
  - (iii) the issue or allotment of any new share or stock; or
  - (iv) any other action,

and as a result the persons who at the date of the Facility Letter together beneficially hold or control more than 50% of the voting, income and capital participation rights in the Borrower holds less than that percentage of the voting, income and capital participation rights in the Borrower;

- (l) without prejudice to clause 14.1(k) the composition of the board of directors of the Borrower changes without the Authority's written consent which in the Authority's opinion is detrimental to the Authority's interests under a Facility Document;
- (m) a Facility Document, or a clause of a Facility Document, is:
  - (i) found or declared by any person other than the Authority; or
  - (ii) alleged or conceded by the Borrower,
 to be void, voidable or unenforceable, or any person becomes entitled to terminate, rescind, or avoid all or any part of that Facility Document;
- (n) there is in the Authority's opinion a Material Adverse Effect on the Borrower or Security Property; or
- (o) any other event occurs or any circumstances arise which, in the Authority's opinion, prejudices the Borrower's ability to meet any one or more of its obligations under a Facility Document.

#### **14.2 Consequences of Event of Default**

Upon the occurrence of an Event of Default, the Authority may declare that the Money Owing:

- (a) is immediately due and payable; or
- (b) payable on demand,

in which case it will become so.

#### **14.3 Enforcement**

The Authority may at any time after the occurrence of any Event of Default, without needing to give any demand or notice to the Borrower:

- (a) enforce this document and the Facility Letter;
- (b) enforce any Security;
- (c) exercise or enforce all or any of the Authority's rights, powers or remedies;
  - (i) conferred by law;
  - (ii) under or arising in connection with this document, the Facility Letter or any Security; and
  - (iii) arising in any other way whatever, or
- (d) do any combination of the above.

## **15 Set-off**

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The Borrower must not at any time claim or purport to exercise any right of set-off or other right or relief at law or in equity which has or might have the effect of reducing or discharging the Money Owing.

## **16 Illegality and Force Majeure**

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### **16.1 Illegality**

- (a) If at any time the Authority determines that it has become unlawful or contrary to any Law or Directive for the Authority to:
  - (i) make the Advance; or
  - (ii) allow the Outstanding Advance (or any part of it) to remain outstanding,then the Authority will, promptly after becoming aware of that, deliver a certificate to that effect to the Borrower.
- (b) In the case of clause 16.1(a)(i) or 16.1(a)(ii) or both, the Authority's obligation to continue to provide the Facility is cancelled and if the Authority requires, the Borrower will, on the date the Authority specifies, prematurely comply with its payment obligations under clause 8.

### **16.2 Force Majeure**

If an act of Force Majeure occurs:

- (a) the Authority's obligations under this document and the Facility Letter (including its obligations to continue to provide or maintain the Facility) are suspended to the extent that the Authority is wholly or partially unable to comply with those obligations by Force Majeure;
- (b) the Authority will as soon as practicable, notify the Borrower of the Force Majeure and the extent to which the Authority is unable to comply with its obligations under this document; and
- (c) the Authority may by notice to the Borrower, to the extent that it is necessary (in the Authority's reasonable opinion) for the Authority to do so, terminate its obligations under this document and the Facility Letter and on receipt of that notice:
  - (i) the Authority's obligation to continue to give the Facility is cancelled; and
  - (ii) if the Authority requires, the Borrower will, on a date the Authority specifies, repay the Money Owing in full.

## **17 Moratorium legislation**

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To the maximum extent permissible by Law, no statute, order, proclamation, regulation or moratorium whether State or Commonwealth, present or future, will apply to any

Facility Document or to any obligation contained in or implied by any Facility Document, so as to extinguish, fetter, delay or otherwise prejudice any of the rights, powers and remedies of the Authority under any Facility Document or otherwise conferred on or available to the Authority.

## **18 Costs**

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Except as outlined in the Facility Letter, the Borrower must pay or reimburse the Authority on demand for all costs and expenses the Authority incurs for:

- (a) any variation, amendment, discharge or release of any Facility Document;
- (b) any consent or approval of the Authority given under any Facility Document;
- (c) any actual or attempted exercise or enforcement of a power, right or remedy conferred on or implied in favour of the Authority under any Facility Document;
- (d) all Taxes, registration fees and like charges in relation to the acquisition or transfer of real property which may be payable or determined to be payable in connection with any Facility Document,

including in each case, legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

## **19 Annual review**

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### **19.1 Authority review**

- (a) The Authority may review the Facility, the financial position of the Borrower and any Security Provider, and the value of the Security Property, annually or at any other time determined by the Authority acting reasonably.
- (b) Subject to this review, the interest rate being applied to the Facility may be varied depending on the eligibility of the Borrower for the continuation of a concessional rate of interest in accordance with the guidelines applicable to the Program.

### **19.2 Authority notice**

If the Authority is of the opinion:

- (a) that there has been a Material Adverse Effect on the Borrower or a Security Provider; or
- (b) the Security Property has diminished in value,

then the Authority may by written notice to the Borrower, require repayment of the Money Owing, and the Money Owing is immediately payable as if the Term had concluded.

## **20 Trust provisions**

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### **20.1 Authority**

- (a) If the Borrower has entered into this document and the Facility Letter as trustee of the Trust, the Borrower and its successors are liable under this document and the Facility Letter as trustee so that the Trust's assets at any time are available to satisfy the Borrower's liabilities under this document and the Facility Letter.
- (b) The Borrower represents and warrants to the Authority that:
  - (i) as at the date of the Facility Letter, all of the powers and discretions conferred by the agreement establishing the Trust are capable of being validly exercised by the Borrower as trustee of the Trust, that these powers and discretions have not been varied or revoked and that the Trust is a valid and subsisting trust;
  - (ii) the Borrower is the sole trustee of the Trust has full and unfettered power under the terms of the agreement establishing the Trust to enter into the Facility Documents (including, if applicable, to encumber the Trust's assets);
  - (iii) the Facility Documents are being executed and entered into as part of the due and proper administration of the Trust and for the benefit of the Trust's beneficiaries; and
  - (iv) no restriction on the Borrower's right of indemnity out of or lien over the Trust's assets exists or will be created or permitted to exist, and that right of indemnity will have priority over the rights of the beneficiaries to the Trust's assets.

### **20.2 Undertakings relating to Trust**

The Borrower must not permit, and it is an Event of Default if there occurs without the Authority's written consent:

- (a) any resettlement, appointment or distribution of the Trust's capital;
  - (b) any retirement or replacement of the trustee or any appointment of a new trustee of the Trust;
  - (c) any amendment of the agreement establishing the Trust;
  - (d) any further encumbrance or charging of any of the Trust's assets;
  - (e) any breach of the agreement establishing the Trust;
  - (f) any termination of the Trust or variation of the vesting date; or
  - (g) if the Trust is a unit trust, any transfer of or dealing with the units,
- and if any of the above occurs the Borrower must inform the Authority immediately.

## **21 General**

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### **21.1 Confidentiality agreement**

- (a) Each party agrees to keep the PPSA Information in strict confidence and not disclose that information, except in circumstances required by section 275(7)(b) or (e) PPSA, provided that where section 275(7)(b) or (e) require such disclosure, the party that is required to disclose the information gives all available notice to the other party to allow that party to legally challenge the required disclosure and takes all available steps (whether required by the other party or not) to maintain such PPSA Information in confidence.
- (b) Each party agrees not to authorise the disclosure of any PPSA Information to any third party pursuant to section 275(7)(c) PPSA or request information under section 275(7)(d) PPSA unless the other party to this document explicitly agrees.

### **21.2 Amendments**

This document and the Facility Letter may only be amended by written agreement between all parties.

### **21.3 Assignment**

- (a) The Authority may assign or otherwise deal with the Facility Documents and its rights under them including by way of charge, securitisation or transfer without the consent of, or notice to, the Borrower. The Authority may disclose information to any person about the transfer, assignment, charge or securitisation.
- (b) The Borrower and any other party may only assign the Facility Documents or its rights under them with the prior written consent of the Authority.

### **21.4 Counterparts**

The Facility Documents may be signed in any number of counterparts. All counterparts together make one instrument.

### **21.5 Entire agreement**

- (a) The Facility Documents supersede all previous agreements about their subject matter and embody the entire agreement between the parties.
- (b) Any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to in any negotiation, arrangement, understanding or agreement, has no effect except to the extent expressly set out or incorporated by reference in any of those documents.

### **21.6 Further assurances**

The Borrower must promptly do all things required by the Authority to give effect to the Facility Documents and the transactions contemplated by them to better secure the payment or satisfaction of the Money Owing to the Authority including, without limitation and where applicable, all things required to perfect the Authority's security interest under the PPSA.

## **21.7 No waiver**

- (a) The failure of a party to require full or partial performance of any provision of a Facility Document does not affect the right of that party to require that performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under a Facility Document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

## **21.8 Governing law and jurisdiction**

- (a) Queensland law governs the Facility Documents.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

## **21.9 Severability**

- (a) A clause or part of a clause of a Facility Document that is illegal or unenforceable may be severed from that document and the remaining clauses or parts of the clause of that document and the Facility Documents continue in force.
- (b) If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from the Facility Document in the relevant jurisdiction, but the rest of that document and the Facility Documents will not be affected.

## **21.10 Notice**

- (a) A notice, consent or communication under a Facility Document is only effective if it is:
  - (i) in writing, signed by or on behalf of the person giving it;
  - (ii) addressed to the person to whom it is to be given; and
  - (iii) given as follows:
    - (A) delivered by hand to that person's address;
    - (B) sent by prepaid mail (and by prepaid airmail if the person is overseas) to that person's address;
    - (C) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient; or

- (D) only for notices, consents or communications given to the Borrower, sent by email to that person's email address.
- (b) A notice, consent or communication delivered under this clause 21.10 is given and received:
- (i) if it is hand delivered or sent by fax or to the Borrower by email:
    - (A) by 5.00pm (local time in the place of receipt) on a Business Day – on that day; or
    - (B) after 5.00pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
  - (ii) if it is sent by post:
    - (A) within Australia – three Business Days after posting; or
    - (B) to or from a place outside Australia – seven Business Days after posting.
- (c) A person's address is as set out in the Facility Letter or as the person notifies to the other party or parties at any time in writing. As at the date of this document, the notice details of the Authority are:
- Address: Level 26, 32 Turbot Street, Brisbane, Queensland 4000
- Attention: Manager Securities
- (d) The giving of a notice, consent or communication under a Facility Document only by email to the Authority is not effective notice to the Authority under a Facility Document.

### **21.11 Non-revocation of power of attorney**

Each person who signs a Facility Document on behalf of a party under a power of attorney declares that they are not aware of any fact or circumstance that might affect their authority to do so under that power of attorney.

### **21.12 Survival of obligations**

- (a) Each representation or warranty in the Facility Documents survives the execution and delivery of the Facility Documents and the provision of the Advance.
- (b) Each indemnity, reimbursement or similar obligation in the Facility Documents:
  - (i) is a continuing, separate and independent obligation;
  - (ii) is payable on demand; and
  - (iii) survives termination or discharge of this the Facility Documents and repayment of the Advance.

- (c) Any other term by its nature intended to survive termination of the Facility Documents survives termination of any Facility Document.
- (d) Without limiting clause 21.12(b), the obligations of the Borrower to repay the Advance in full under clause 8 and pay any interest continue despite expiration of the Term.