

# Loan with Specific Security Agreement Terms and Conditions

## November 2023 Version

### IMPORTANT NOTICE FOR GUARANTORS

If we ask for a *guarantee*, the *guarantor* needs to read *this document* (including clause 25).

- The *guarantor* should seek independent legal, financial and *tax* advice on the effect of this *guarantee* and indemnity before it agrees to sign it.
- The *guarantor* can refuse to sign this *guarantee* and indemnity.
- There are financial risks involved in signing this *guarantee* and indemnity (eg it may become necessary for you to sell *your* assets so that it can pay us).
- The *guarantor* has the right to limit its liability under this *guarantee* and indemnity in accordance with the Banking Code of Practice and as allowed by law.
- The *guarantor* can request information about the transaction or *facility* to be guaranteed (including any existing *facility* with *us* to be refinanced by the new *facility*).
- **This *guarantee* and indemnity covers liability under a future credit contract or a variation of an existing credit contract to the extent the future credit contract or variation (together with all other existing credit contracts secured by this *guarantee* and indemnity) is within a limit previously agreed in writing by the *guarantor*.**

**Important note** This document does not contain all the terms of *your* loan with specific security agreement or all of the information *we* are required by law to give *you* before the agreement is made. Further terms and conditions are in the *schedule* which forms part of this agreement.

Part B sets out additional conditions that apply if an agreement under *your* loan with specific security agreement is a *large business transaction*. These terms apply in addition to the terms in the other parts of the *document*.

We will tell you in the *schedule* if *your* agreement is a *large business transaction*.

**IT IS IMPORTANT THAT YOU READ ALL THESE DOCUMENTS CAREFULLY AND RETAIN THEM FOR FUTURE REFERENCE.**

Financial products and services are provided by BOQ Specialist – a division of Bank of Queensland Limited ABN 32 009 656 740 AFSL and Australian credit licence No. 244616

This document is made on the date set out in Item 1 of the *schedule*.

BETWEEN *we / us*

AND *you*

AND *the guarantor*.

## Part A – Facility Provisions

### 1 Facility

- (a) *We* agree to make the *facility* available to *you* on the terms of *this document*.
- (b) In addition to any other clause in *this document*, *you* acknowledge that *we* may delay, block or refuse to make a payment or take any other action where *we* reasonably consider it necessary to do so in order to avoid a breach of *Australian Sanctions Law* or *International Sanctions Law*.
- (c) Unless *we* otherwise agree, *you* will not be entitled to redraw any part of the *advance* repaid.
- (d) *You* may only use the *facility* for the purposes specified in Item 9 of the *schedule* or any other purposes *we* agree to in writing.

### 2 Drawdown

- (a) The *facility* must be drawn down in one *advance*.
- (b) *You* agree that drawdown will occur on the date that the conditions precedent in clause 3 have been satisfied, when either one of the following occurs:
  - (i) *we* pay the amount of the *advance* to *you* or as directed by *you* to another person, including, without limitation, the manufacturer or supplier of the *secured property*; or
  - (ii) *we* pay the amount of the *advance* into a contract clearing account but allocated to *you* if *you* have not directed *us* to pay such amount to *you* or to another person in accordance with (i) above. The contract clearing account is an account within *our* bank (it is not an account in *your* name, but is allocated to *you*) and no interest is earned on it,
- (c) *You* agree that after drawdown occurs pursuant to paragraph 2(b)(ii) above, *we* will pay the amount of the *advance* held in the contract clearing account allocated to *you* as and when *you* direct *us* to do so. If *you* do not provide *us* with any instructions within six months of the date of the drawdown, the *advance* will be applied:
  - (i) if the *facility* is a *fixed rate loan*, against remaining repayments due under the *repayment schedule* on the remaining repayment dates in inverse order of maturity; or

- (ii) if the *facility* is a *variable rate loan*, to reduce the principal outstanding.
- (d) *You* agree to provide *us* with a tax invoice for the *secured property* promptly upon request.

### 3 Conditions precedent

*We* are only obliged to make the *facility* available to *you* if the following conditions precedent are satisfied:

- (a) each *transaction party* has properly executed the *transaction documents*;
- (b) all other conditions set out in *this document* and the *schedule* that are required to be satisfied before *we* make the *facility* available to *you* have been fulfilled;
- (c) *we* have received all *fees* and expenses incurred by *us* in establishing the *facility*; and
- (d) *we* have received any additional documentation or information *we* require in connection with *us* making the *facility* available in a form and substance satisfactory to *us*.

*You* cannot use this *facility* if an *event of default* or *potential event of default* is subsisting.

### 4 Interest on the *advance*

#### 4.1 Interest

- (a) Interest accrues daily on the *advance* at the *interest rate*. Interest on a *variable rate loan* is calculated on the actual days elapsed based on a 365 day year. Interest on a *fixed rate loan* is calculated on the actual days elapsed based on a 360 day year. For the avoidance of doubt, this interest accrues from the date the *advance* is paid under clause 2(b) and, if the drawdown occurs pursuant to clause 2(b)(ii), will accrue even if *you* have not directed *us* to pay such amount to *you* or to another person in accordance with clause 2(b)(i).
- (b) *You* must pay and *we* may debit to the *facility*, interest in arrears on the *advance* on the last *business day* of each *interest period* in respect of the whole of that *interest period*.
- (c) *You* can obtain information on the current *interest rate* from *us* on request.

#### 4.2 Interest periods

- (a) Subject to this clause 4.2, each *interest period* for the *advance* will be a period of 30 days or other period acceptable to *us*.
- (b) The first *interest period* begins on the *drawdown date*. Each subsequent *interest period* begins on the day when the preceding *interest period* ends.
- (c) An *interest period* that would otherwise end on a day that is not a *business day* ends on the next *business day* (unless that day falls in the following month, in which case the *interest period* ends on the previous *business day*).
- (d) An *interest period* that would otherwise end after the *expiry date* ends on the *expiry date*.

- (e) You can obtain information on the current interest rate from *us* on request. If the *facility* is a *variable rate loan* we may change the interest rate by giving *you* notice in writing or by publishing the change in the national media or on *our* website or otherwise in accordance with *our* obligations at law or under an applicable industry code. If the *facility* is a *fixed rate loan*, the interest rate will not change.

## 5 Part prepayments of the *advance*

- (a) Subject to this clause 5, *you* may prepay any part of the *principal outstanding* (in multiples of the amount specified in Item 10 of the *schedule* or as otherwise agreed by *us*) on the last day of an *interest period* for the *advance*.
- (b) If the *facility* is a *fixed rate loan*, prepayments will not be applied against the *principal outstanding* but will be applied to the remaining repayments due under the *repayment schedule* on the remaining repayment dates in inverse order of maturity.
- (c) If the *facility* is a *variable rate loan*, prepayments will be applied to reduce the *principal outstanding*.

## 6 Full prepayment of the *advance*

- (a) Subject to this clause 6, *you* may prepay all of the *principal outstanding* at any time.
- (b) If *you* repay this *facility* in full before the *expiry date*, either voluntarily or due to the exercise of *our* rights under clause 21, *you* must pay to *us*:
- (i) if the *facility* is a *variable rate loan*, the whole of any remaining *principal outstanding* together with any arrears outstanding, accrued interest, plus if the *facility* is more than 12 months from the *expiry date*, a termination fee equal to 0.5% of the *principal outstanding*, and other *fees* as per Schedule 2. To calculate the *principal outstanding* in this clause any prepayments made during the *term* of the loan are excluded;
- (ii) if the *facility* is a *fixed rate loan*, the *termination amount*.

## 7 Repayments

- (a) *You* agree to repay the *principal outstanding* and any interest (as contemplated in clause 4) as set out in the *repayment schedule*.
- (b) If this *facility* is a *variable rate loan* and the repayments change, *we* will notify *you* in writing.

## 8 Expiry

On the *expiry date* *you* must pay to *us*:

- (a) the whole of any remaining *principal outstanding* together with accrued interest and *fees* on that amount; and

- (b) all other money then payable by *you* under *this document* and unpaid.

## 9 Accrual and payment

If a *transaction party* does not pay any amount they owe *us* when it is due, *we* can charge a higher interest rate on that amount. Interest accrues on each unpaid amount that is due and payable by a *transaction party* under or in respect of any *transaction document* (including interest payable under clauses 4 and 9):

- (a) daily up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier;
- (b) both before and after judgment (as a separate and independent obligation); and
- (c) at the overdue rate.

The *transaction parties* must pay interest accrued under this clause 9 on demand by *us*.

*You* can obtain information on the current *overdue rate* from *us* on request.

Where an agreement *you* have with *us* uses the terminology 'default interest' or 'past due interest' these have the same meaning as paying interest at the *overdue rate* as applicable.

If a *transaction party* is a farmer and *we* have provided them with a *facility* that is used for the purposes of a farming operation, *we* will not charge the *transaction party* interest at a higher rate (or *fees* instead of overdue interest) during any period that the land the *transaction party* uses for that farming operation is in drought or natural disaster, where the Banking Code of Practice requires this.

However, the *transaction party* may have to tell *us* about the circumstances before *we* can do these things or provide them with a refund.

In this clause the words "farmer" or "farming operation" have the meaning given to them in the Banking Code of Practice.

## 10 Statements

If the *facility* is a *variable rate loan*, *we* will send *you* a statement for this *facility* at least every six months.

## 11 Payments

- (a) The *transaction parties* must make all payments under any *transaction document* in A\$ by transfer of *cleared funds* to the account or accounts in Australia *we* specify, by 11.00am Australian eastern standard time on the due date.
- (b) All payments to be made by *you* under *this document* must be made without set-off, counterclaim or deduction unless prohibited by law.
- (c) If *you* are prohibited by law from making those payments free and clear of all deductions and withholdings, then:
- (i) *you* agree to deduct the relevant amount (and any further deduction applicable in relation to this clause 11);

- (ii) *you* agree to pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipts to *us*; and
- (iii) *you* must pay an additional amount to *us* so that the actual amount received after deduction or withholding (and after payment of any additional *taxes* or other *charges* due as a consequence of the payment of the additional amount) equals the amount that *we* would have received if the deduction or withholding were not required.
- (d) Whenever any payment by a *transaction party* becomes due on a day that is not a *business day*, the due date will be the preceding *business day*.

## 12 Increased costs

If *we* are affected by any change in, any making of or any change in the interpretation or application by any *government agency* of, any law, official directive or request and as a result:

- (a) the effective cost to *us* of making, funding or maintaining any accommodation made available or to be made available under the *transaction documents* is increased in any way;
- (b) any amount paid or payable to *us* or received or receivable by *us*, or the effective return to *us* under or in respect of any *transaction document* is reduced in any way; or
- (c) the return on the capital that is or becomes directly or indirectly allocated by *us* to any accommodation made available or to be made available under the *transaction documents* is reduced in any way,

then on demand *you* must pay to *us* the amount certified by *our authorised officer* to be necessary to compensate *us* for that increased cost or the reduction.

## 13 Specific Security Interest

- (a) In consideration of, amongst other things, *us* providing *you* with the *facility*, *you* grant *us* a *security interest* in the *secured property* as security for the payment of all of *your* obligations under this *facility*.
- (b) *You* do this as absolute or beneficial owner unless the *schedule* indicates that *you* are a trustee of a trust. If the *schedule* indicates that *you* are a trustee of a *trust* *you* agree that this *security interest* is binding on *you* both personally and in *your* capacity as trustee and *you* grant this *security interest*:
  - (i) in the *secured property* comprising the assets of the *trust* as sole trustee of the *trust*; and
  - (ii) in the balance of the *secured property* as beneficial owner.

## 14 Mandatory action

To the extent that any law requires that something must be done (such as obtaining consent) before *you* may

validly grant a *security interest* over any of the *secured property*, the *security interest* under clause 13 only takes effect in relation to that *secured property* when the thing required is done. *You* agree to do anything reasonably necessary to ensure that it is done.

## 15 Acknowledgment

If, and to the extent, indicated in the *schedule*, *you* acknowledge that *we* have provided financial accommodation which has been, or is to be used wholly or in part to purchase, or acquire rights in, the *secured property* described in the *schedule*.

## 16 Representations, warranties and undertakings

16.1 Each *transaction party* represents, warrants and undertakes that:

- (a) **(power)** the *transaction party* has the ability and power to enter into and perform its obligations under the *transaction documents* to which it is a party and to carry out the transactions contemplated by them;
- (b) **(compliance)** the *transaction party* has complied with, and will continue to comply with:
  - (i) all laws, requirements of any *government agency* and other obligations binding on it which affect or relate to it, any of its undertakings under each *transaction document* or any of the *secured property*; and
  - (ii) if the *transaction party* is a corporation, its constitution and any other document or agreement which affect or relate to it, any of its undertakings under each *transaction document* or any of the *secured property* ;
- (c) **(default under other documents)** the *transaction party* is to the best of its knowledge and belief not in default under a document or agreement (including an *authorisation*) binding on that person or that person's assets, and nothing has occurred that confirms an *event of default*, cancellation event, prepayment event or similar event (whatever called) under those documents or agreements, whether immediately or after notice or lapse of time or both, where that may have a *material adverse effect*;
- (d) **(event of default)** no *event of default* or potential *event of default* has occurred;
- (e) **(authorisations)** each *authorisation* that is required in relation to:
  - (i) the execution, delivery and performance by the *transaction party* of the *transaction documents* to which it is a party and the transactions contemplated by them;
  - (ii) the validity and enforceability of those documents and the effectiveness or priority of the *securities*;

- (iii) any of its undertakings under *this document* or any of the *secured property*;
- (iv) *your* business and the conduct of *your* business that relates to the *transaction documents* or the *secured property*,  
has been obtained or effected, is in full force and effect, has been complied with and all applicable *fees* have been paid;
- (f) **(accuracy of information)** all information provided by the *transaction party* to *us* is to the best of *your* knowledge and belief true in all material respects at the date of *this document* or, if later, when provided. There is no information known to a *transaction party* that has not been disclosed in an appropriate manner by it to *us* that would materially and adversely affect the business, assets, revenues or financial condition of any *transaction party* or its capacity to perform its respective obligations under the *transaction documents*;
- (g) **(your details)** *your* details as set out in the *schedule* are correct and *you* will notify *us* at least 14 days before:
  - (i) *you*, the *trust* (if *you* enter into *this document* as a *trustee*) or the *partnership* changes its name as recorded in a public register in its jurisdiction of incorporation or in its constituent documents; or
  - (ii) any ARBN allocated to *you* or any ABN or ARSN allocated to the *trust* or any ABN allocated to the *partnership* changes, is cancelled or otherwise ceases to apply to it (or if it does not have any such applicable number, one is allocated, or otherwise starts to apply, to it); or
  - (iii) *you* become trustee of a trust, or a partner in a partnership, not stated in the *schedule*.
- (h) (serial numbered *secured property*)
  - (i) if the *secured property* includes any motor vehicles, as detailed in the *schedule*, that the *serial numbers* provided to *us* are to the best of *your* knowledge and belief correct; and
  - (ii) if *you* acquire any motor vehicles after the date of *this document*, *you* must, within 5 *business days* of the acquisition, provide to *us* the relevant details (as set out in the *schedule*) of those motor vehicles.
- (i) **(trustee)** unless specified in the *schedule*, the *transaction party* does not hold any assets as the trustee of any trust;
- (j) **(benefit)** it (or its beneficiaries if it is a trustee) benefits by entering into the *transaction documents* to which it is a party;
- (k) **(controller)** no *controller* is currently appointed to any of the *transaction party's* property;
- (l) **(solvency)** the *transaction party* is able to, and will continue to be able to, pay that person's debts as and when they fall due for payment after entering into or participating in any *transaction document* or any transaction contemplated under any of those documents to which it is a party;
- (m) **(taxes)** the *transaction party* has and will pay all *taxes* payable by it when due;
- (n) **(ownership of secured property)** it has good title to the *secured property* free from any *security interest* other than *permitted security interests*;
- (o) **(no change to business)** there has been no change in the scope or nature of its business from that disclosed to *us* before the date of *this document* which would adversely affect *your* ability to meet *your* obligations under the *transaction documents* or in respect of the *secured property*;
- (p) **(control)** no person other than *you* has or will have *control* of the *secured property*; and
- (q) the *transaction party* will not do, or omit to do, anything that would cause *us* to breach *Australian Sanctions Laws* or *International Sanctions Law*.

## 16.2 Reliance

Each *transaction party* acknowledges that *we* have entered into the *transaction documents* in reliance on the representations and warranties in *this document*.

## 16.3 Survival

All representations and warranties in any *transaction document* survive the execution and delivery of the *transaction documents* and the provision of the *advance*.

## 17 Specific undertakings in relation to the *secured property*

### 17.1 Use and maintenance of the *secured property*

*You* must:

- (a) maintain *your* rights to and under the *secured property* and maintain the *secured property* in good working order, substantial repair and condition (ordinary wear and tear excepted) and free from damage or destruction, and correct any defect to the extent that failure to do so would be likely to have, a *material adverse effect*;
- (b) not cause or permit anything to be done by which may reduce the value of the *secured property*;
- (c) not, without *our* consent, allow any *secured property* to become an accession to, affixed to, or mixed with, any property that is not *secured property* (or otherwise the subject of a *security interest* in favour of *us*);

- (d) use and service the *secured property* in accordance with the manufacturer's or supplier's instructions and recommendations;
  - (e) maintain and complete correctly the service records and any log book for the *secured property*;
  - (f) ensure that replacement parts are at least of the same quality than those fitted to the *secured property* when they were purchased by *you*;
  - (g) replace any of the *secured property* which become damaged or destroyed with articles of a similar nature and value;
  - (h) do whatever is reasonably necessary to ensure that all warranties and *guarantees* given by the manufacturer or supplier of the *secured property* are effective;
  - (i) not alter any identifying mark of the *secured property* (such as a *serial number*);
  - (j) ensure that *you* own any replacements for and accessories and attachments and accessions fitted to the *secured property*;
  - (k) not fit to or remove from (or permit to be fitted to or removed from) any accessory or attachment and accession to the *secured property* if this might materially lower the value of the *secured property*;
  - (l) if the *secured property* are capable of registration, keep the *secured property* registered;
  - (m) give *us* access to the *secured property* to enable *us* to inspect the *secured property* on giving you reasonable notice and to fix identifying plates or marks on or to the *secured property* to indicate that the *secured property* are subject to this *security interest* and that dealings with the *secured property* are restricted, or for any related purpose; and
  - (n) not, without *our* consent, move (or allow to be moved) any *secured property* from the *premises*, except in the ordinary course of *your* business or in accordance with its intended use, and notify *us* if any *secured property* are moved from the *premises* by anyone else, and, wherever possible, notify *us* where they are moved to; and
  - (o) not use or permit the *secured property* to be used for an unlawful, illegal or wrongful purpose and not do or permit anything with respect to the *secured property* which would or might result in the seizure or forfeiture of the *secured property* or the creation of any interest over the *secured property*.
  - (ii) take out and maintain insurance against public risk liability in relation to the *secured property* and *your* use of the *secured property* for an amount approved by *us* from time to time;
  - (iii) punctually pay all premiums under any insurance policy and upon demand provide proof of punctual payment, the policy and/or any certificate of currency to *us*;
  - (iv) have *our* interest noted on all insurances required by *us*;
  - (v) *not* do or permit anything to occur which may increase any premium or contravene, prejudice or invalidate any insurance policy;
  - (vi) notify *us* in writing as soon as any event happens which entitles a claim to be made under any insurance; and
  - (vii) not settle or compromise any claim without *our* consent.
- (b) Unless expressly provided otherwise in a *transaction document* or as otherwise consented to in writing by *us*, the proceeds of each insurance policy required to be maintained by *you* under a *transaction document* (other than a claim under workers compensation, public liability or professional indemnity insurance) must be applied to either reinstate the asset insured or repay the *secured money* whether or not due. If an *event of default* is subsisting, *we* may take over all of *your* rights to make, pursue or settle an insurance claim and may do so in such manner as *we* see fit.
- (c) *You* must continue to make all payments due under *this document* or under any *transaction documents* despite any damage to or destruction of the *secured property*. *You* must repair, restore or rebuild promptly any damaged or destroyed *secured property* so that on the completion of the repair, restoration or rebuilding the value and utility of the *secured property* will be at least equal to the value and utility of the *secured property* immediately before the damage or destruction.
- (d) Upon reasonable notice, *you* must allow *us* and *our* nominees to inspect the *secured property*, enter any land or premises *you* own or occupy and carry out any tests of the *secured property* that *we*, or *our* nominees, consider necessary.

## 17.2 Insurance

- (a) *You* must:
  - (i) insure and keep insured the *secured property* with an insurer approved by *us* for their full insurable value against risks usually insured against, including fire, storm, and tempest, and against any other risks BOQ Specialist may specify in a *transaction document*;

## 17.3 Survival of undertakings

Each undertaking in this clause 17 continues from the date of *this document* until the *secured money* is fully and finally repaid.

## 18 Negative pledge by transaction parties

- 18.1 Without *our* prior written consent which will not be unreasonably withheld or delayed, each *transaction party* must not:

- (a) (restricted dealings with *secured property*) do any of the following:
- (i) create or allow to exist another *security interest* in connection with the *secured property* other than:
    - (A) under the *securities*; or
    - (B) permitted *security interests*; or
  - (ii) assign or otherwise deal in any way with *this document* or any interest in it, or allow any interest in it to arise or be varied;
  - (iii) sell or dispose of any *secured property*; or
  - (iv) lease or licence the *secured property* or any interest in any *secured property*, or deal with any existing lease or licence (including allowing a surrender or variation); or
  - (v) part with possession of any *secured property*; or
  - (vi) give *control* of any *secured property* to any person other than *you* or *us*; or
  - (vii) waive any of *your* rights or release any person from its obligations in connection with any *secured property*; or
  - (viii) assign or otherwise deal in any other way with it or any interest in any *secured property*, or allow any interest in any *secured property* to arise or be varied.
- (b) **((no material adverse effect)** the *transaction parties* must not do or omit to do any act, matter or thing in relation to the *secured property* if the doing or omission to do such act, matter or thing would have a *material adverse effect*.

## 19 Other security interests

### 19.1 Where the law allows for creation of *security interests* without consent

- (a) If the law allows *you* to create another *security interest* over the *secured property* without *our* consent, this clause 19 does not operate to require *you* to obtain *our* consent before creating that other *security interest*. However:
- (i) if *you* intend to create another *security interest*, *you* agree to notify *us* at least 5 *business days* before *you* propose to do so; and
  - (ii) if *we* request an agreement under clause 19.2 and *you* have not complied with that request by the time the *security interest* is created, further financial accommodation need not be made available under an *BOQ Specialist arrangement*.

## 19.2 Priority agreement

If *we* so request, *you* must obtain an agreement acceptable to *us* regulating priority between the *securities* and any other *security interest* over the *secured property*.

## 19.3 Amount secured by other *security interest*

*You* must ensure that the amount secured under any other *security interest* over the *secured property* is not increased without *our* consent.

## 19.4 We may rely on third party certificates

*We* may rely on a certificate from any other person with a *security interest* over the *secured property* as to the amount that is owed to that other person, except where there is a clear error.

## 20 Events of default

### 20.1 It is an *event of default* if:

#### Monetary *event of default*

- (a) **(non payment)** a *transaction party* fails to pay any amount payable under a *transaction document* when it becomes payable and that failure continues for 7 days after notice from *us*;

#### Non-monetary *event of defaults*

- (b) **(insolvency)** a *transaction party* is insolvent;
- (c) **(default under another arrangement)** a default based action is taken by *us* against a *transaction party*, due to an *event of default* set out in this clause 20.1;
- (d) **(unlawful behaviour)** *we* believe on reasonable grounds that *you* or a *guarantor* has not complied with the law or any requirement of a statutory authority which would adversely affect *your* ability to meet *your* obligations under a *transaction documents* or put the *secured property* at risk;
- (e) **(illegality)** it becomes unlawful for *you* or *us* to continue with an agreement;
- (f) **(misrepresentation)** a *transaction party* gives *us* information or make a representation or warranty to *us* which is materially incorrect or misleading (including through omission) which has had, or is likely to have, a material increase to our risk under the *transaction documents* or the *security*;
- (g) **(unapproved use)** *you* use the *facility* for a purpose not approved by *us*;
- (h) **(improper dealing with assets)** a *transaction party's* assets are dealt with, or attempted to be dealt with, in breach of this *document* or any *transaction document*, or any *security*;
- (i) **(financial information)** a *transaction party* does not provide financial information reasonably required by *us* or any *transaction document*;
- (j) **(authorisations)** a *transaction party* does not maintain an unrestricted licence or permit or *authorisation* necessary to conduct its

business and this would constitute a material risk to *us* or the *secured property*;

- (k) **(insurances)** a *transaction party* does not maintain insurance required by a *transaction document*;
- (l) **(change of control)** legal or beneficial ownership, or management *control*, of a *transaction party* changes without *our* reasonable consent.

20.2 Where a *non-monetary event of default* is able to be remedied, *we* will only act on that *non-monetary event of default* after we:

- (a) give you a default notice describing the *event of default*; and
- (b) give you a reasonable time (being not less than 30 days) to remedy the *event of default*,

except where it is reasonable for *us* to give you no notice or a shorter notice period if *we* reasonably believe it is necessary to act quickly to manage a material and immediate risk relating to:

- (i) the *event of default*;
- (ii) *your* particular circumstances; or
- (iii) the value of a *security*.

20.3 *We* will then only act on a *non-monetary event of default* if it is by its nature material, or *we* reasonably consider the *event of default* has had, or is likely to have, a material impact on:

- (a) *you* or a *guarantor's* ability to meet *your* or their financial obligations (or *our* ability to assess this);
- (b) *our* security risk (or *our* ability to assess it);
- (c) *our* legal or reputation risk where clause 20.1(d), 20.1(e), 20.1(f) or 20.1(g) applies.

## 21 Consequences of an *event of default*

### 21.1 *Our* rights and powers on default

If an *event of default* has occurred under an agreement and *we* can act on that *event of default*, *we* may do one or more of the following in addition to anything else the law allows *us* to do:

- (a) by notice to *you* declare all or part of the *secured money* owing and immediately due and payable, and *you* must immediately pay to *us* all or part of the *secured money* (as specified in the notice);
- (b) terminate *our* obligations under *this document*;
- (c) enforce any or all of the *securities* in any order *we* choose; and
- (d) take any action that *we* (or any person acting on *our* behalf) are or entitled to take under law or *this document* or any other *transaction document* on the occurrence of an *event of default* including, without limitation:
  - (i) **(recover payment)** recover the *secured money* from the *you*;
  - (ii) **(exercise powers)** exercise any right, power or privilege conferred by law,

equity, *this document* or any of the *transaction documents*;

- (iii) **(possession)** take possession of and withdraw from possession of the *secured property* and enter any premises where the *secured property* may be located;
- (iv) **(sell)** sell, assign, transfer, dispose, exchange, barter and grant options in respect of the *secured property* in any manner and on any terms and conditions *we* think fit, acting reasonably, including terms as to payment of the whole or any part of the purchase money either with or without interest, and either with or without taking security;
- (v) **(contracts)** rescind or vary any contract for sale of the *secured property*;
- (vi) **(lease)** lease, license or otherwise part with possession of the *secured property* in any manner *we* think fit, acting reasonably, and accept or purchase surrenders of any leases or licences;
- (vii) **(receiver)** appoint in writing any person or any two or more persons jointly and/or severally to be *your receiver* or agent of the whole or any part of the *secured property*;
- (viii) **(business)** conduct any business in relation to the *secured property* and exercise any powers of a *receiver* whether or not a *receiver* has been appointed;
- (ix) **(income)** sign anything and do anything *we* think reasonably advisable to obtain income and returns from the *secured property*;
- (x) **(your obligations)** perform any one or more of *your* obligations under *this document* and/or any *transaction documents* including making payments to any person who holds security over the *secured property*;
- (xi) **(repair)** repair, cleanse, repaint, demolish, rebuild, alter or add to the *secured property*;
- (xii) **(authorisations)** prepare plans and specifications and obtain *authorisations* from any competent authority;
- (xiii) **(pay creditors)** pay out any money owing to any person in respect of the *secured property*;
- (xiv) **(perform contracts)** perform, observe, carry out, enforce, vary or rescind any of *your* contracts, obligations or rights;
- (xv) **(incidental rights)** do anything incidental to any of *our* powers under this clause.

*We* will give *you* notice or comply with certain conditions before *we* require *you* to immediately pay all amounts *you* owe *us* or before *we* take



*enforcement proceedings* or other action. For example, if an *event of default* has occurred, we will give *you* at least 30 days' notice before we require *you* to immediately pay all amounts *you* owe *us* or take *enforcement proceedings* (however, we can give *you* a shorter notice period or no notice in certain circumstances).

## 21.2 Negation of restrictions

Neither we nor a *receiver* need give *you* any notice or allow time to elapse before exercising a right under this *security interest* or conferred under law, unless the notice or lapse of time is required by law and cannot be excluded.

## 21.3 We can exercise all our rights

We may recover the *secured money* by exercising our rights under *this document* and/or any *transaction document* or any of them without prejudice or reference to our rights under any other document.

## 21.4 Receiver

- (a) In exercising the power to appoint a *receiver*, we may appoint a *receiver* to all or part of the *secured property*.
- (b) The *receiver* will comply with the directions given from time to time by *us* but at all times and for all purposes will be deemed to have been acting as *your* agent (unless we notify *you* that the *receiver* is *our* agent). *You* are solely responsible for anything done or not done by the *receiver* and for the *receiver's* remuneration.
- (c) We may set the remuneration of a *receiver* at an amount we consider appropriate, remove a *receiver* or appoint a new or additional *receiver*. If we appoint more than one *receiver*, we may specify whether they may act individually or jointly.
- (d) *You* must indemnify the *receiver* and *us* against any act, claim, demand, suit or other liability arising out of or because of any act, omission or default by the *receiver*.
- (e) A *receiver* may do anything the *receiver* considers appropriate to recover the *secured property* and deal with the *secured property*. Without limitation, the *receiver* may do any one or more of the following:
  - (i) **(exercise our powers)** exercise any of the powers conferred on *us* by *this document*, any *transaction document* or otherwise conferred by law;
  - (ii) **(borrow money)** borrow or raise money (including from *us*) for the exercise of any of the *receiver's* powers either unsecured or secured by a *security interest* over the *secured property* ranking either in priority to, or on an equal footing with, or after *this document*;
  - (iii) **(receipts)** give effectual receipts for all money and other assets which may come into the *receiver's* hands;
  - (iv) **(proceedings)** institute, prosecute, and defend proceedings at law, in equity or

in bankruptcy in *your* name or otherwise;

- (v) **(compromise)** make any arrangement or compromise which the *receiver* thinks expedient in *our* interest;
- (vi) **(delegate)** with *our* prior written consent, delegate to any person for any time or times as we approve any of the powers conferred on the *receiver* under *this document*; and
- (vii) **(pay costs)** pay the *receiver's costs*, *fees* and expenses out of the *secured property*.

## 22 Application of money

We may apply the money we receive in any manner we see fit, acting reasonably, toward payment of the *secured money*.

## 23 Costs and indemnities

### 23.1 Costs

*You* must pay or reimburse *us*, except to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors or agents, or any receivers we appoint, on request, for *our* reasonable *costs* and expenses (including legal *costs* and expenses on a full indemnity basis) in relation to:

- (a) **(transaction costs)** *our* reasonable *costs* in connection with the preparation, negotiation, execution and registration of *this document*, making searches and enquiries in connection with *you* and *your* assets, taking advice in relation to *our* rights in connection with *you* and *your* assets and giving and considering consents, waivers, variations, discharges and releases and producing documents and providing information in connection with *this document*;
- (b) **(other costs)** *our* and any attorney's or *receiver's costs* of exercising, enforcing or preserving rights, powers or remedies (or considering doing so) in connection with *this document* or doing anything in connection with any enquiry by an authority involving *you* or *your* assets, *this document* or anything in connection with them (including reasonable *costs* in connection with any investigation we conduct of an *event of default* or *potential event of default*); and
- (c) **(taxes)** stamp duty, registration and similar *taxes* or *fees* paid or payable, in connection with *this document* or a payment or receipt or any other transaction contemplated by *this document* (including any fines and penalties in connection with any of these amounts). However, *you* need not pay or reimburse a fine or penalty to the extent that *you* have given *us* all necessary documents and sufficient *cleared funds* in sufficient time to enable *us* to pay those *taxes* or *fees* by the due date.

*You* have to pay these amounts within 10 *business days* after we ask for them.

## 23.2 Indemnities

- (a) You indemnify *us* against any direct loss, reasonable *costs*, charge, liability or expense *we* sustain or incur caused or contributed to by:
- (i) any *event of default* or potential *event of default*;
  - (ii) any exercise or attempted exercise of any right, power or remedy under any *transaction document*;
  - (iii) the *secured property* (including any indemnity *we* give a *controller* or administrator of *you*); and
  - (iv) any act by *us* in reliance on or any communication purporting to be from a *transaction party* or to be given on that *transaction party's* behalf that on its face appears to be genuine and signed by an *authorised officer* of that *transaction party*,

This includes liabilities, losses, *costs*, charges, and expenses sustained or incurred by:

- (v) any of our representatives;
- (vi) a receiver appointed under a *transaction document*.

Your liability under this indemnity does not include liabilities, losses, *costs*, charges and expenses to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our *representatives* or any *receiver we* appoint.

*You* have to pay these amounts within 10 *business days* after *we* ask for them.

- (b) Each indemnity in the *transaction documents* is a continuing obligation, separate and independent from the other obligations of the *transaction party* and survives the termination of *this document*.

## 24 GST

- (a) All payments to be made by the *transaction parties* under or in connection with any *transaction document* have been calculated exclusive of *GST* unless expressly stated otherwise.
- (b) If all or part of any such payment is the consideration for a taxable supply for *GST* purposes then, when the *transaction party* makes the payment:
- (i) it must pay to *us* an additional amount equal to the *GST* payable by *us* on that supply; and
  - (ii) *we* will promptly provide to the *transaction party* a tax invoice complying with the relevant *GST* legislation.
- (c) Where under any *transaction document* a *transaction party* is required to reimburse or indemnify for an amount, the *transaction*

*party* must pay the relevant amount less any *GST* input tax credit *we* determine that *we* are entitled to claim in respect of that amount together with, if the payment or reimbursement is subject to *GST*, an amount equal to the *GST* on that payment or reimbursement.

- (d) If an adjustment event arises in respect of a taxable supply made by *us* under any *transaction document*, the amount payable by *you* under this clause 24 will be recalculated to reflect the adjustment event and a payment will be made by *you* to *us* or by *us* to *you* as the case requires.
- (e) You indemnify *us* against any liability resulting from delay or omission to pay those *taxes* under this clause except to the extent the liability results from *our* failure to pay any *tax* after having been put in funds by *you* to do so.

## 25 Guarantee and Indemnity

**Does the *Banking Code of Practice* apply to this guarantee and indemnity?** Some provisions of this clause 25 are stated to apply only if the *Banking Code of Practice* applies, or does not apply, to this clause 25.

The *Banking Code of Practice* will apply to this clause 25 in relation to a guarantor that is an individual if the Code of *Banking Code of Practice* applies to *this document* or a *transaction document* (where relevant). The *Banking Code of Practice* will apply to *this document* or a *transaction document* (where relevant) if the customer is an individual or a small business as defined in the *Banking Code of Practice*.

When the *Banking Code of Practice* applies:

The *guarantor* should note that there are financial risks involved in entering into providing the *guarantee* and indemnity under this clause 25, and the *guarantor* may refuse to provide this *guarantee* and indemnity.

The *guarantor* may be able to end, withdraw from or limit its liability under this *guarantee* and indemnity to the extent allowed under the *Banking Code of Practice*. The *guarantor* may need to do something before it can do one or more of these things and there may be some limitations on its ability to do this. For example:

- (a) if the *guarantor* wants to end its liability under the *guarantee* and indemnity it may have to pay *us* the relevant amounts that it may be liable for under the *guarantee*;
- (b) the *guarantor* can also withdraw from the *guarantee* and indemnity before *we* provide credit to *you* and in some circumstances after *we* provide credit; and
- (c) the *guarantor* can write *us* to limit its liabilities under the *guarantee* and indemnity. (However, *we* do not have to accept this if the limit the *guarantor* asks for is less than *your* existing liabilities or if *we* are obliged to make further advances to *you*).

The *guarantor* can contact *us* if it wants more information about whether and how it can end, withdraw from or limit its liability under this *guarantee* and indemnity.

We recommend that the *guarantor* asks its legal and financial adviser about *this document*. We will provide

information about the customer and *this document and/or a transaction document* (where relevant) in accordance with the *Banking Code of Practice*, and upon request.

If:

(a) the *Banking Code of Practice* would otherwise make a provision of this *guarantee* and indemnity illegal, void or unenforceable; or

(b) a provision of this *guarantee* and indemnity would otherwise contravene a requirement of the *Banking Code of Practice* or impose an obligation or liability which is prohibited by the *Banking Code of Practice*, this *guarantee* and indemnity is to be read as if that provision were varied to the extent necessary to comply with the *Banking Code of Practice* or, if necessary, omitted.

(a) In consideration of *us* at the request of the *guarantor* entering into *this document* and each *transaction document*, the *guarantor* unconditionally and irrevocably *guarantees* to *us*:

- (i) the due and punctual performance of *your* obligations under *this document* and each *transaction document* or any holding over under each *transaction document*; and
- (ii) except where the *guarantor* has limited its liability under this *guarantee* and indemnity (as specified in the *schedule*), the *secured money*.

(b) Except where the *guarantor* has limited its liability under this *guarantee* and indemnity (as specified in the *schedule*), if *you* do not perform *your* obligations under *this document* and each *transaction document* or any holding over under each *transaction document*, or pay the *secured money*, on time and in accordance with the *transaction documents* then the *guarantor* agrees to pay the *secured money* to *us* on demand.

Except where the *guarantor* has limited its liability under this *guarantee* and indemnity (as specified in the *schedule*), as a separate obligation, the *guarantor* indemnifies *us* against any loss or damage that *we* may suffer or sustain as a result of the non-payment of the *secured money* or the non-performance of any of *your* obligations under *this document* or each *transaction document* or due to the termination or expiration of this *facility* excluding any loss or damage to the extent caused by *our* mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of *our* employees, officers, contractors or agents, or any receivers *we* appoint. The *guarantor* agrees to pay amounts due under this indemnity on demand from *us*.

(c) Except to the extent the *guarantor* has a right conferred by the *Banking Code of Practice*:

- (i) this *guarantee* and indemnity constitutes continuing obligations despite any intervening payment, settlement or other thing and extends to

all money owing under *this document* and each *transaction document*; and

(ii) *we* have the right to make a *claim* or demand on the *guarantor* under this *guarantee* and indemnity without having first taken any proceedings against *you* or any other person.

(d) Except where the *guarantor* has limited its liability under this *guarantee* and indemnity (as specified in the *schedule*), this *guarantee* and indemnity is not to be considered as wholly or partly discharged unless and until all of the *secured money* has been paid in full.

(e) In the event of *your insolvency* or bankruptcy:

- (i) the *guarantor* must not prove in such *insolvency* or bankruptcy in competition with *us* without *our* prior written consent;
- (ii) if required by *us* in writing, the *guarantor* must immediately prove in any such *insolvency* or bankruptcy for all money owed to the *guarantor* and will not exercise or attempt to exercise any right of set-off against *you*;
- (iii) money recovered by the *guarantor* from any such *insolvency* or bankruptcy or pursuant to the realisation or enforcement of any security taken by the *guarantor* from *you* must be paid immediately to *us* to the extent of the unsatisfied liability of the *guarantor* under this *guarantee* and until paid will be held by the *guarantor* on *our* behalf; and
- (iv) the *guarantor* authorises *us* to prove for all money which the *guarantor* has paid under this *guarantee* and any other money due by *you* to the *guarantor*.

(f) Without limiting this clause 25, as long as there is money owing under a *transaction document*, the *guarantor* may not without *our* prior written consent, which will not be unreasonably withheld or delayed:

- (i) reduce its liability under this *guarantee* and indemnity, by claiming that it, *you* or any other person has a right of set-off or counterclaim against *us*; or
- (ii) claim or exercise a right to claim, to be entitled (whether by way of subrogation or otherwise) (to the benefit of another *guarantee*, indemnity or other right including but not limited to a *security interest*):
  - (A) in connection with *this document* or each *transaction document* including but not limited to the *secured money* or any other amount payable under this *guarantee* or
  - (B) in favour of a person other than *us* in connection with any obligations of, or any other

amounts payable, by *you* to, or for the account of, that other person; or

- (iii) claim an amount in *your* insolvency or of any other *guarantor*;
- (iv) claim an amount from *you* or another *guarantor* under a right of indemnity or contribution.

If *we* ask, the *guarantor* agrees to notify any relevant person of the terms of this clause and other parts of the *guarantee* in this clause that may be relevant. The *guarantor* also authorises *us* to do so at any time in *our* discretion and without first asking the *guarantor* to do it. This applies despite anything else in this clause.

- (g) Except to the extent the *guarantor* has a right conferred by the *Banking Code of Practice*, rights given to *us* under this *guarantee* and indemnity, and the *guarantor's* liabilities under it, are not affected by any act or omission by *us* or any other person. For example, those rights and liabilities are not affected by:

- (i) any act or omission:
  - (A) varying or replacing in any way and for any reason any arrangement under which the obligations under *this document* and each *transaction document* or any holding over under each *transaction document* and *secured money* is expressed to be owing, such as by increasing a *facility* limit or extending the term;
  - (B) releasing *you* or giving *you* a concession (such as more time to pay); or
- (ii) acquiescence or delay by *us* or any other person.

- (h) If there is more than one *guarantor* then the obligations under this *guarantee* and indemnity bind each of them separately and any two or more of them jointly.

## 26 Trust

This clause applies to any *transaction party* who is the trustee of a *trust*.

### 26.1 Capacity

The *transaction party* enters into *this document* not only as trustee of the *trust* but also so as to bind itself personally for the obligations of the *transaction party* under *this document* whether or not it has the capacity to enter into *this document* as trustee of the *trust*.

### 26.2 Representations and warranties

The *transaction party*, both as trustee of the *trust* and in its own right, represents and warrants that it is empowered by the *trust deed* to enter into and perform the *transaction documents* to which it is a party and:

- (a) it has in full force and effect all authorisations necessary to enter into and perform the *transaction documents* and allow them to be enforced (including any *authorisation* required under the *trust deed*);
- (b) entry into, and performance of, the *transaction documents* is consented to by, and is for the benefit of, the beneficiaries of the *trust*;
- (c) it is the sole trustee of the *trust*;
- (d) no assets of the *trust* have been resettled or set aside or transferred to any other *trust* or trusts;
- (e) the *trust* has not been terminated, nor has the date or any event for the vesting of the assets of the *trust* occurred;
- (f) its right of indemnity out of, and lien over, the assets of the *trust* has not been limited in any way and the assets of the *trust* are sufficient to satisfy that right of indemnity and all other obligations in respect of which the trustee has a right to be indemnified out of the assets of the *trust*;
- (g) the beneficiaries are not presently entitled to any part or all of the assets of the *trust* and the rights and interest of the beneficiaries in and to the assets of the *trust* are subject to:
  - (i) *our* rights and interest in the assets of the *trust* under the *transaction documents*; and
  - (ii) any rights and interests the trustee has in the assets of the *trust* to which *we* may be subrogated.

### 26.3 Undertakings

Unless *we* otherwise consent in writing, the *transaction party*, both as trustee of the *trust* and in its own right, must:

- (a) ensure that the *trust deed* is not amended, varied or revoked;
- (b) ensure that there is no resettlement of any of the assets of the *trust*;
- (c) duly and punctually comply with its obligations and duties under the *trust deed* and at law;
- (d) ensure that no other person is appointed trustee of the *trust*;
- (e) not do anything that would cause or enable its removal, replacement or retirement, as trustee of the *trust*;
- (f) ensure that there is no restriction or limitation on or derogation from its right of subrogation or indemnity from the assets of the *trust* (whether or not arising under the *trust deed*);
- (g) not make any distribution of the income of the *trust* for so long as:
  - (i) a *potential event of default* or an *event of default* has occurred and has not been waived;

- (ii) not make any distribution of the capital of the *trust*, if that distribution relates to the *secured property* or otherwise in any way adversely affects the value of the *secured property*;
- (iii) not do anything which will prejudice *our* rights in relation to the *secured property* under any *transaction document*; and
- (iv) if the *trust* is a unit trust, not permit any redemption of units in the *trust*;
- (v) tell *us* immediately it becomes aware if anything happens to prevent a *transaction party* from repeating any declaration in this clause.

## 27 Partnerships

- (a) If the *schedule* indicates that *you* are a partnership:
  - (i) *you* agree to notify *us* if a person ceases to be, or becomes, a partner;
  - (ii) each partner is liable individually, and together with other partners liable jointly, for *your* obligations and liabilities under an *BOQ Specialist arrangement* to which *you* are a party; and
  - (iii) each *BOQ Specialist arrangement* will continue to bind each person who is a partner at the date of this security agreement and each person who becomes a partner, despite changes in the membership of the partnership or the fact that the person is no longer a member of the partnership.

## 28 Direct Debit Request – Service Agreement

The Direct Debit Request Service Agreement set out in this clause applies if *you* complete the Direct Debit Request in the *schedule*.

### 28.1 Drawing Arrangement

- (a) *We* undertake to periodically debit *your* nominated account for any amount owing under *your facility*.
- (b) *We* will draw the required drawing on the due date. A drawing fee as set out in the *fee schedule* will apply to the direct debit arrangement. If any drawing falls on a public holiday or a non *business day*, the drawing will be debited to *your* account on the prior *business day*.
- (c) *We* will not change the amount or frequency of the drawings without *your* prior approval. *We* will notify *you* of changes to *your* direct debit in accordance with clause 43.
- (d) *We* reserve the right to cancel the direct debit if three or more drawings are returned unpaid by *your* nominated financial institutions and to arrange with *you* an alternate payment arrangement.
- (e) *We* will keep all information pertaining to *your* nominated account at the financial institution, private and confidential.

### 28.2 Your Rights

- (a) *You* may terminate the direct debit arrangements outright or stop a payment by giving *us* written notice or notice to *your* financial institution. Notice should be received by *us* at least 5 *business days* prior to the date.
- (b) *You* may request a change to the drawing amount and the frequency by contacting *us* and advising of *your* requirements no less than 5 working days prior to the date. Note any change does not alter *your* responsibility to meet the required payment owing under *your facility*. Where *you* consider that a drawing has been initiated incorrectly *you* may take the matter up directly with *us* or lodge a Direct Debit Claim through *your* financial institution.

### 28.3 Your responsibilities

- (a) It is *your* responsibility to ensure that sufficient *cleared funds* are available in the nominated account to meet the drawing on its due date. Failure to do so may result in the drawing being dishonoured by *your* financial institution, and may incur a dishonour fee as set out in the *fee schedule*. In such circumstance *we* reserve the right to also charge a dishonour fee.
- (b) It is *your* responsibility to ensure the authorization given to draw on the nominated account is identical to the account signing instructions held by the financial institutions where the account is based.
- (c) It is *your* responsibility to advise *us* if the account nominated by *you* to receive the drawings is transferred or closed.
- (d) It is *your* responsibility to arrange with *us* a suitable alternate payment method if *you* wish to cancel the drawing.

## 29 Dealing with interests

- (a) A *transaction party* must not cause or permit any person to acquire an interest in the *transaction party's* rights or obligations under the *transaction documents*.
- (b) *We* may assign all or any of *our* rights and benefits under any *transaction document* to any person, including a securitisation or funding vehicle, or a sub-participant of *our* participation under any *transaction document*, without *your* consent. *We* may also novate or otherwise transfer all or any of *our* rights or obligations under the *transaction documents* to any person. *We* may only exercise our right to assign, novate or transfer under this clause if in our reasonable opinion the assignment, novation or transfer will not materially prejudice *your* rights or obligations under any *transaction document*.
- (c) *We* may provide any person to which *our* rights or obligations may be assigned, novated or transferred with any information necessary to effect that securitisation so long

as they agree to keep that information confidential.

### 30 Financier

We enter into *this document* as the provider of the *facility*. The *securities* may be registered either in *our* name or in one of *our* subsidiaries, nominees or agent

### 31 PPS Act undertaking

(a) If *you* hold any *security interests* for the purposes of the *PPS Act* and if failure by *you* to perfect such *security interests* would materially adversely affect *your* business, *you* agree to implement, maintain and comply in all material respects with, procedures for the perfection of those *security interests*. These procedures must include procedures designed to ensure that *you* take all steps under the *PPS Act* to continuously perfect any such *security interest* including all steps reasonably necessary:

- (i) for *you* to obtain the highest ranking priority possible in respect of the *security interest* (such as perfecting a *purchase money security interest* or perfecting a *security interest* by *control*); and
- (ii) to reduce as far as possible the risk of a third party acquiring an interest free of the *security interest* (such as including the *serial number* in a *financing statement* for *personal property* that may or must be described by a *serial number*).

(b) Everything *you* are required to do under this clause is at *your* expense. *You* agree to pay or reimburse *our costs* in connection with anything *you* are required to do under this clause.

### 32 Further assurances

- (a) Each *transaction party* must, and must ensure that each other *transaction party*, does anything *we* ask and consider necessary (at its own expense) (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) to:
- (i) provide more effective security over the *secured property* for payment of the *secured money* including assigning or transferring by way of security to *us* any *secured property*;
  - (ii) bind *yourself* and any other person intended to be bound under the *transaction documents*;
  - (iii) ensure that the *transaction documents* are not void, voidable or otherwise unenforceable by *us* in accordance with their terms;
  - (iv) ensure that the *security interest* is enforceable, perfected (including registration and where possible, by

*control* in addition to registration under the *PPS Act*) and otherwise effective;

- (v) stamp and enable *us* to apply for any registration, or give any notification, in connection with the *security interest* so that the *security interest* has the priority required by *us*;
- (vi) enable *us* to exercise *our* rights in connection with the *security interest*;
- (vii) bind *you* and any other person intended to be bound under *this document*; or
- (viii) enable *us* to register the power of attorney in clause 38 or a similar power; or
- (ix) show whether *you* are complying with the *transaction documents*; and
- (x) authorise *us* to sign any documents on its behalf and do anything else *we* reasonably consider appropriate to effect a novation under clause 29.

(b) Everything a *transaction party* is required to do under this clause is at that *transaction party's* expense. Each *transaction party* agrees to pay or reimburse *our costs* in connection with anything that *transaction party* is required to do under this clause but has not done.

(c) This clause applies to anything *we* ask any *transaction party* to do in connection with the *PPS Act*.

### 33 Reinstatement of rights

If, under any law relating to insolvency or for any other reason, a person claims that a transaction (including a payment) in connection with *this document*, a *transaction document* or the *secured money* is void, voidable, unenforceable or defective for any reason and the claim is upheld, conceded or settled, then, except to the extent caused by *our* mistake, error, fraud, negligence or wilful misconduct or the mistake, fraud, negligence or wilful misconduct of *our* employees, officers, contractors or agents, or any receivers *we* appoint:

- (a) *we* are immediately entitled as against the relevant *transaction party* to the rights in respect of the *secured money* to which it was entitled immediately before the transaction; and
- (b) on request from *us*, the relevant *transaction party* agrees to do anything (including signing any document) to restore *us* to *our* position immediately before the transaction (including, without limitation reinstating *this document* or any *transaction document*).

### 34 Non-avoidance

If any payment by a *transaction party* to *us* is at any time avoided for any reason including any legal limitation, disability or incapacity of or affecting *you* or any other thing, and whether or not:

- (a) any transaction relating to the *secured money* was illegal, void or substantially avoided; or

- (b) any thing was or ought to have been within *our* knowledge,

that *transaction party*:

- (c) as an additional, separate and independent obligation, indemnify *us* against that avoided payment;
- (d) acknowledge that any liability of that *transaction party* under *this document* or any *transaction document* and any of *our* rights or remedies under *this document* or the *transaction documents* is the same as if that payment had not been made; and
- (e) must, promptly upon request by *us*, do and agree to do any act and sign any document to restore to *us* any right held by *us* from the *transaction party* immediately prior to that payment.

## 35 Notices

- (a) A notice or other communication connected with *this document* (*notice*) must be in writing and given by a party, its *authorised officer* or its lawyer.
- (b) A *notice* must be:
  - (i) delivered to the recipient's address as set out in the *schedule*;
  - (ii) posted to the recipient's address as set out in the *schedule* by prepaid ordinary post or airmail;
  - (iii) sent by email to the recipient's email address as set out in the *schedule*.
- (c) Service of a *notice* is considered to have occurred, if sent as a:
  - (i) delivered letter – at the time it is delivered;
  - (ii) posted letter – on the 2nd *business day* after posting or the 7th *business day*, if posted to or from a place outside Australia; or
  - (iii) email –
    - (A) when the sender receives an automated message confirming delivery; or
    - (B) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,whichever happens first.
- (d) A *notice* may be given and signed by a party's lawyer and delivered to a party's lawyer by any of the means listed in this clause or to the lawyer's business address, or email address.

## 36 *Our* determination

- (a) If *we* are asked *we* will give the reasons for *our* determination or opinion in relation to any matter under any *transaction document*.

- (b) A determination or an opinion by *our authorised officer* that is given to a *transaction party* or otherwise expressed or acted on by *us* as being *our* determination or *our* opinion will be treated as being a determination or opinion by *us*.

## 37 Approvals and consent

Whenever a provision of this *document* specifies that our consent or approval is required or that *we* may direct or require *you* to do or not do some act or thing, or that *we* will determine whether an event has occurred or not occurred, unless this *document* provides otherwise, *we* will act reasonably and without unreasonable delay in determining whether or not to give that *consent* or approval, determining whether that event has occurred or directing *you* to take some action or satisfy a requirement of ours.

## 38 Attorneys

- (a) *You* appoint *us*, each of *our authorised officers*, *our* employees and each *receiver* individually as *your* attorneys. *You* may not revoke any of these appointments. Each attorney may do anything which *you* can do as owner of the *goods*.
- (b) If an attorney executes *this document*, the attorney declares that the attorney has no notice of revocation, termination or suspension of the power of attorney under which the attorney executes *this document*.

## 39 Cumulative rights

The rights, powers and remedies provided in *this document* are in addition to those provided by law independently of *this document* and each right, power and remedy provided in *this document* (including any right of indemnity) is additional to and not exclusive of every other right, power or remedy provided in *this document*.

## 40 Confidentiality

- (a) Each *transaction party* and *we* agree not to disclose information provided by each other that is not publicly available (including the existence or contents of any *transaction document*) except:
  - (i) to any person in connection with an exercise of rights or a dealing with rights or obligations under *this document* in connection with preparatory steps such as negotiating with any potential transferee of *our* rights or any other person who is considering contracting with *us* or a *receiver* in connection with *this document*;
  - (ii) to officers, employees, agents, contractors, legal and other advisers and auditors of *you*, *us* or a *receiver*;
  - (iii) with the consent of the party who provided the information (such consent not to be unreasonably withheld);
  - (iv) to any party to *this document* or any *related body corporate* of any of them,

provided the recipient agrees to act consistently with this clause;

- (v) any disclosure the disclosing party reasonably believes is required by any law, stock exchange or rating agency (except this paragraph does not permit *us* to disclose any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies)

(b) Each *transaction party* and *we* consent to disclosures made in accordance with this clause.

(c) This clause survives the termination of *this document*.

#### 41 Severability of provisions

If any clause or part of a clause of a *transaction document* is prohibited or unenforceable then the rest of the transaction document or part of any transaction document is to be interpreted as if that clause or part of the clause is not part of this transaction document or any other transaction document.

#### 42 Act promptly

If a transaction document specifies when *you* must perform an obligation, *you* must perform it by time specified. You must perform all other obligations promptly.

#### 43 Variation

43.1 *We* may need to make changes to *this document*.

43.2 *We* can make a change to *this document* if:

- (a) *we* reasonably consider *you* will benefit from it;
- (b) it is administrative or minor or corrects a mistake or omission;
- (c) it reflects changes to our business or systems;
- (d) it is made for security reasons or because of the requirements of any law;
- (e) the change is reasonably made on a product or like customer basis (for example, to reflect current industry or market products or conditions); or
- (f) the change is necessary to facilitate moving *you* from a discontinued product to a current product where the features of that product are comparable to the discontinued product and no less favourable to *you*.

*We* will tell *you* about changes as soon as reasonably possible (which may be before or after the change is made) or, where the change is unfavourable to *you*, by providing *you* with 30 days' notice or such longer period as may be required under the law or any code to which *we* subscribe (including the Banking Code of Practice).

However, if *we* change an interest rate, *we* will tell *you* no later than the date of the change, unless *we* are not able to because the interest rate is calculated accordingly to a money market rate or some other external rate, or a rate otherwise designated as a variable rate.

Where there is a change to, or introduction of, a government fee or charge, *we* will tell *you* reasonably promptly after the government notifies *us* (however, *we* do not have to tell *you* if the government publicises the change to, or introduction of, the fee or charge).

*We* can also give *you* a shorter notice period (or no notice) of an unfavourable change if it is reasonable for *us* to avoid, or to reduce, a material increase in our credit risk or our loss.

*We* tell *you* of changes by writing to *you*, advertising in a newspaper, placing a notice on or with a statement of account or other material *we* send *you*, or in any other way permitted by law or any code to which *we* subscribe.

If *you* are not satisfied with any change made by *us* under this clause 43 (other than a change to interest rates where the interest rate has not been fixed) *you* can choose to terminate the agreement by giving *us* notice and repaying the *termination amount*. *We* will not charge *you* any *fees* to terminate the agreement or discharge any *securities* except our reasonable third party *costs* incurred in discharging any *securities*.

#### 44 Waiver and exercise of rights

- (a) A right in favour of *us* under a *transaction document*, a breach of an obligation of a *transaction party* under a *transaction document*, or the occurrence of an *event of default* can only be waived by a written instrument signed by *us*. No other act, omission or delay of *us* will constitute a waiver.
- (b) A single or partial exercise or waiver by *us* of any right under a *transaction document* will not prevent any other exercise of that right or the exercise of any other right.
- (c) *We* and *our representatives* will not be liable for any of *your losses, costs* or expenses caused or contributed to by the waiver of, exercise of, attempted exercise of, failure to exercise or delay in exercising a right *we* have, except to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors or agents, or any receivers *we* appoint.

#### 45 Your acknowledgement

- (a) *We* make no representation or warranty in relation to, nor accept any liability or responsibility for, the taxation, accounting or financial consequences of *this document*.
- (b) *You* have obtained *your own* financial advice and made *your own* enquiries in relation to *your obligations* including, but not limited to, taxation obligations under *this document* and *you* will make *your own* judgment and decision in respect of the utilisation of the *facility* independently and without reliance on *us*.

#### 46 Right to re-value and consultants

- (a) *We* have the right to obtain a new or updated valuation in relation to any *secured property* if an *event of default* is subsisting and *you*



have not been able to remedy the default after being given time to do so. You must pay *us* all reasonable *costs* in connection with the valuation.

- (b) We may appoint accounting, legal, financial management or other consultants and investigators to examine *your* affairs at any reasonable time. For example, if *we* reasonably believe *you* are or may be in default or *we* reasonably believe that circumstances exist which could lead to *you* being in default, *we* may appoint a consultant to investigate whether this belief is accurate. You must co-operate with and comply with every reasonable request made by the consultant (including by making financial records available).
- (c) You must pay *us* all *costs* in connection with any valuer or consultant *we* appoint in accordance with this clause 46.
- (d) Any valuer or consultant *we* may use is an independent contractor and is not our agent or employee. We are not responsible for any representation, action or inaction by them.
- (e) Any report *we* obtain from the valuer or consultant is for our use only. Even if *we* give *you* a copy of the report, *you* cannot rely on it. You cannot sue *us*, the valuer or consultant if the report is wrong. You must obtain *your* own report if *you* wish to rely on it.

#### 47 Time for performance

Subject to any express provision to the contrary in *this document*, if:

- (a) the day on which anything is to be done is not a *business day*, that thing must be done on the next following *business day*; and
- (b) an act, other than a payment or the giving of a communication, is required to be done on a particular day and the act is done after 5.00pm on that day, it will be treated as having been done on the following day.

#### 48 Set-off

*We* may set-off against any debt due and owing by a *transaction party* to *us*, including debts due and owing under any *transaction document*, any debt due and owing by *us* to the *transaction party*, including any money in any currency held by *us* for the account of the *transaction party* in any place.

#### 49 Counterparts

*This document* may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

#### 50 Governing law

The law of the *jurisdiction* governs *this document* and the parties submit to the non-exclusive jurisdiction of the courts of the *jurisdiction* and of the Commonwealth of Australia.

#### 51 Banking Code of Practice

(1) As part of *our* commitment to customer service, *we* have adopted the *Banking Code of Practice*. This is a self-regulatory code which aims to foster good relations between banks and customers, and to promote good banking practice. The *Banking Code of Practice* applies to banking services provided to customers who are "individuals" or "small businesses" as defined in it. *We* will comply with the *Banking Code of Practice*, where it applies to the banking services *we* provide to *you*.

(2) Clauses 51(3) to (4) apply to the extent that the Banking Code of Practice applies to this document.

(3) If you have a problem, complaint or dispute

(a) Our service commitment

At BOQ Specialist, *we* are committed to providing our customers with innovative banking solutions and the best customer service experience.

Resolution of problems is a priority for *us*. If at any time our service does not meet *your* expectations, *we* would like *you* to let *us* know.

(b) How to contact us

If *you* have a complaint, there are a number of ways to contact us:

- Contact *your* dedicated finance specialist
- Call *us* on 1300 160 160, 24 hours a day, 7 days a week
- Complete the online complaints form at [www.boqspecialist.com.au/feedback](http://www.boqspecialist.com.au/feedback)
- Contact our Customer Relations Department via:  
Email: [customer.relations@boqs.com.au](mailto:customer.relations@boqs.com.au)  
Call: 1800 663 080  
Write to: Customer Relations  
Paid 2258  
Brisbane QLD 4001

(c) How will *your* complaint be handled?

If *we* cannot solve *your* problem on the spot, *we* will let *you* know who is handling *your* complaint and how long it is likely to take for it to be resolved.

For further information about how *we* handle complaints, ask our friendly staff for a copy of our complaint guide or alternatively download a copy available on our website.

(d) What to do if *you* feel *your* complaint has not been resolved

If you're unhappy with our response you can approach the Australian Financial Complaints Authority (AFCA). AFCA provides a free and independent complaint resolution service for financial services. To contact them you can:

Call: 1800 931 678  
Email: info@afca.org.au  
Online: www.afca.org.au  
Write to: GPO Box 3  
Melbourne VIC 3001

The Australian Securities and Investments Commission (ASIC) has an information line: 1300 300 630. You can use this number to make a complaint and obtain further information about your rights.

- (4) We understand that some situations can bring about financial stress, including illness or injury and changes to employment. If you are experiencing financial difficulties please contact us to discuss options and solutions.

## 52 Definitions

In *this document* the following definitions apply unless the context indicates otherwise:

A\$ means the lawful currency of Australia;

*accounts* means profit and loss accounts and balance sheets together with statements, reports and notes, including a director's report or an auditor's report, attached to or intended to be read with any of those profit and loss accounts or balance sheets;

*advance* means the loan drawn down under this *facility* in accordance with *this document* or, as applicable, the outstanding principal amount of that *advance* (including capitalised interest);

*Australian Sanctions Laws* means:

- (a) the United Nations Security Council (UNSC) sanctions pursuant to the Charter of the United Nations Act 1945 (Cth) and its associated regulations as part of Australia's international obligations; and
- (b) autonomous sanctions pursuant to the Autonomous Sanctions Act 2011 (Cth) and its associated regulations as part of Australia's independent foreign policy.

*authorisation* includes any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption prescribed by law or regulation or required by any *government agency*;

*authorised officer* means:

- (a) in relation to a *transaction party*, any director or company secretary of the *transaction party*, or any person nominated by the *transaction party* by a notice to us as an *authorised officer* on behalf of the *transaction party* to sign notices or documents in connection with any of the *transaction documents*, the notice to be accompanied by specimen signatures of the persons concerned; and

- (b) in relation to us, any person whose title or office includes the word director, manager, associate or consultant, or any person acting in any of those offices, or any person appointed as an *authorised officer* by us;

*base rate* in relation to an *interest period* means the rate determined by us and notified to you from time to time acting in good faith as to our costs of funds for providing the *facility* or other funding as applicable;

*BOQ Specialist arrangement* means any arrangement (including an agreement or a *security interest*) under which a *transaction party* has or could in the future have obligations to us;

*break costs* means an amount equal to our reasonable estimate of our loss arising from early repayment to us during a period when the *interest rate* was fixed. We calculate it by reference to factors such as any movement in our cost of funds at the time of repayment compared with the start of the period for which interest had been fixed. Amounts calculated in respect of the remainder of the original fixed interest period are discounted to the net present value at the rate equivalent to our cost of funds at the early repayment date. For more detailed information about how we calculate break costs, please refer to our Break Costs Fact Sheet, available on our website at <https://www.boqspecialist.com.au/important-information>;

*business day* means a day that is not a Saturday, Sunday or public or bank holiday in the *jurisdiction*;

*cleared funds* means immediately available funds;

*collateral security* means any *security interest*, *guarantee* or other document or agreement at any time created or entered into as security for any *secured money*;

*control* of a corporation includes:

- (a) a person or a group of persons holding 50.1% or more voting *shares* in the corporation; or
- (b) the direct or indirect power to:
- (i) direct the management or policies of the corporation; or
- (ii) *control* the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in *shares* or stock of the corporation or otherwise;

*controller* has the meaning given to it in section 9 of the *Corporations Act*;

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

*costs* includes costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

*drawdown date* has the meaning given in clause 2.

*enforcement proceedings* means a person:

- (a) starting proceedings in a court to recover a debt or to recover possession of property subject to a *security interest*;
- (b) otherwise enforcing a *security interest* by taking possession of property (or taking steps to do so) or exercising a power of sale or appointing *receivers* or voluntary administrators;
- (c) applying to a court to appoint a provisional liquidator or a trustee in bankruptcy; or
- (d) enforcing a judgment against another person or their assets.

*event of default* means any event described in clause 20 or otherwise specified in *this document* as an *event of default*;

*expiry date* means the day on which the final repayment is due under the *repayment schedule*;

*facility* means the *facility* to be provided under *this document* up to the *facility limit*;

*facility limit* means the *facility* limit specified in the Item 4 of the *schedule*;

*fee schedule* means the *schedule* of *fees* set out in Schedule 2;

*fees* means any *fees* specified in the *fee schedule*

*financial indebtedness* means any indebtedness or other liability (present or future, actual or contingent) relating to any financial accommodation including indebtedness or other liability:

- (a) for money borrowed or raised;
- (b) relating to the sale or negotiation of any negotiable instrument;
- (c) as lessee under any finance lease (as defined in applicable accounting standards), as hirer under any asset purchase agreement or as purchaser under any title retention agreement;
- (d) relating to any redeemable preference share;
- (e) for the deferred purchase price of any property or services other than indebtedness for the purchase price of trading stock incurred in the ordinary course of business;
- (f) under any commodity, currency or interest rate swap agreement, forward exchange rate agreement or under any future contract (as defined in any statute); or
- (g) under any *guarantee* relating to any financial accommodation;
- (h) financing statement has the meaning given in the *PPS Act*;

*fixed rate* means the rate agreed in writing between *you* and *us*;

*fixed rate loan* means the *facility* provided under *this document* in relation to which the interest rate is the *fixed rate*, as nominated in Item 7 of the *schedule*;

*government agency* means any government or governmental, semi-governmental or judicial entity or authority in any state, country or other jurisdiction, including any self-regulatory organisation established under a statute or stock exchange;

*GST* means any goods or services *tax*, value-added *tax*, consumption *tax* or similar *tax* including as that term is defined in the *GST Act*;

*GST Act* means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

*guarantee* means any *guarantee*, indemnity, letter of credit, performance bond, legally binding letter of comfort, an option arrangement or suretyship, or any similar transaction or a combination of them;

*guarantor* means each person named in Item 15 of the *schedule* as a guarantor and any other person who gives a *collateral security* or any of them;

*insolvency event* means the happening of any one or more of the following events to a *transaction party*:

- (b) it is bankrupt, insolvent or insolvent under administration, in *liquidation*;
- (c) if it is a body corporate, it is unable to pay its debts as they fall due;
- (d) if it is an individual, it ceases to be of full legal capacity;
- (e) in the case of an individual, commits an act of bankruptcy, enters into a composition with their creditors, is declared or becomes bankrupt; or
- (f) it is taken (under section 459F(1) of the *Corporations Act*) to have failed to comply with a statutory demand;
- (g) it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act*;
- (h) it is subject to the process of any court or authority invoked against it or any of its property to enforce any judgment or order for the payment of money or the recovery of any property;
- (i) the holder of a *security interest* takes possession of any or all of its assets or property; or
- (j) something having a substantially similar effect to these occurrences happens in connection with that *transaction party* under the law of any applicable jurisdiction.

*interest period* means each interest period for the *facility* as described in clause 4.2;

*interest rate* means:

- (a) in relation to a *variable rate loan*, the *base rate* plus the *margin*; or
- (b) in relation to a *fixed rate loan*, the *fixed rate* (if any),

unless otherwise agreed in writing between *you* and *us*;

*International Sanctions Laws* means any applicable sanctions laws or regulations administered or enforced from time to time by the U.S government (including OFAC, the US State Department or any other agency of the US government), the United Nations Security Council, the European Union or Her Majesty's Treasury or any other sanctions authority in a jurisdiction other than Australia;

*jurisdiction* means the State or Territory specified in Item 16 of the *schedule*;

*large business transaction* means any agreement where:

- (a) *your* agreement is not subject to the unfair contract terms protections in the ASIC Act and is not regulated under the *NCCP Act*, nor under the Banking Code of Practice; and
- (b) *we* tell *you* in the *schedule* that *your* agreement is a large business transaction;

*liquidation* includes provisional liquidation, administration, receivership, compromise, arrangement, amalgamation, official management, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death;

*margin* means the percentage (if any) referred to in the *schedule*;

*material adverse effect* means a material adverse effect on:

- (a) the ability of any *transaction party* (as a whole) to comply with that party's obligations under any *transaction document*; or
- (b) *our* rights and remedies under the *transaction documents*; or
- (c) the effectiveness or priority of any *security interest* under any *transaction document*; or
- (d) the validity or enforceability of any *transaction document*;

*monetary default* means an *event of default* referred to in clause 20.1(a):

*NCCP Act* means the *National Consumer Credit Protection Act 2009* (Cth);

*non-monetary default* means a *default* other than a *monetary default*.

*notification threshold* means \$50,000 or such other amount as *we* specify;

*overdue rate* means the interest rate plus 4%;

*partnership default* means, where *you* are a partnership and without *our* consent:

- (a) there is a change in the constitution of the partnership; or
- (b) the partnership is dissolved;

*permitted security interest* means in relation to each *transaction party*:

- (a) the *securities*;
- (b) any *security interest* over any of that party's assets to which *we* have expressly consented;
- (c) a lien arising by operation of law in the ordinary course of day-to-day trading and not securing *financial indebtedness*, where the party duly pays the indebtedness secured by that lien other than indebtedness contested in good faith;
- (d) a charge or lien arising in favour of a *government agency* by operation of statute unless there is default in payment of money secured by that charge or lien; and
- (e) any rights of set-off, netting or combination of accounts;

*personal property* has the meaning given in the *PPS Act*;

*potential event of default* means any event or circumstance that with the giving of notice or passage of time or both would become an *event of default*;

*PPS Act* means the Personal Property Security Act 2009 (Cth);

*premises* means any place where *you* carry on business;

*principal outstanding* means the principal amount outstanding of the *advance* (including capitalised interest);

*purchase money security interest* has the meaning given in the *PPS Act*;

*receiver* has the meaning given in the *Corporations Act*;

*related body corporate* has the meaning given by section 9 of the *Corporations Act*;

*repayment schedule* means the *schedule* for repayment outlined in Item 10 of the *schedule* or as otherwise advised by *us*;

*representative* means a person's officer, employee, contractor or agent;

*schedule* means the Loan with Specific Security Agreement – Schedule annexed to *this document* as varied from time to time;

*secured money* means all amounts that are owing or payable to *us* by a *transaction party*:

- (a) under any *transaction document*;
- (b) by a *transaction party* alone or jointly or separately with any other person;
- (c) in a *transaction party's* own right or in any capacity;

*secured property* means *your* right, title and interest in:

- (a) the "Secured Property" as described in the *schedule* (including any motor vehicles, aircraft, watercraft or other goods);
- (b) replacements for and accessories and additions, attachments and accessions fitted to any of the above at any time and consumables used in any of the above;
- (c) warranties and performance *guarantees* in connection with any of the above (including those given by a manufacturer or supplier);

*securities* means:

- (a) the *security interest* granted under *this document*; and
- (b) any *collateral security*;

*security interest* means:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, encumbrance, lien, pledge, trust, title retention or deposit arrangement, caveat, *trust* or power held as security; or
- (a) 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; or

- (b) 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
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment; or
- (d) anything that is a 'security interest' as defined under the *PPS Act*,

or any agreement to create any of the above or allow them to exist;

*serial number* has the meaning given in the *PPS Act*;

*shares* means shares, stock units or units in the capital of a corporation;

*subsidiary* has the meaning given by section 9 of the *Corporations Act*;

*tax* includes any *tax*, *GST*, rate, levy, charge, impost or duty (including stamp and transaction duties) and any interest, penalty, fine or expense relating to or in connection with any of them except if imposed on *our* net overall income or if they arise as a result of our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors and agents or any receiver *we* appoint;

*termination amount* means, for a particular day and a *fixed rate loan*, an amount equal to the sum of:

- (a) the whole of any remaining principal outstanding on that day;
- (b) a termination fee of \$230;
- (c) any arrears outstanding, accrued interest and any other *fees* as per Schedule 2; and
- (d) any *break costs*.

*this document* means the Loan with Specific Security Agreement comprised of:

- (a) the *schedule*; and
- (b) the Loan with Specific Security Agreement Terms and Conditions (November 2023 Version);

*transaction documents* means:

- (a) *this document*;
- (b) the *securities*;
- (c) any document or agreement entered into or provided under or in connection with, or for the purpose of amending or novating, any of the above;
- (d) any undertaking by or to a party or that party's lawyers under or in relation to any of the above; and
- (e) any other document that *we* and *you* agree is a *transaction document*;

*transaction party* means *you* and any *guarantor*, or any of those persons;

*trust* means the *trust* (if any) described in the *schedule*, and *trust deed* means the deed of *trust* or settlement described in the *schedule* relating to that *trust*;

*trust default event* means, whether or not it is within *your control*, the happening of any one or more of the following:

- (a) a new or additional trustee of the *trust* is appointed;
- (b) the beneficiaries of the *trust* resolve to wind up the *trust* or *you* are required to wind up the *trust* under the terms of the *trust* or applicable law, or the winding up of the *trust* commences;
- (c) a *trust* is held or is conceded by *you* not to have been constituted or to have been imperfectly constituted;
- (d) *you* cease to be authorised under the terms of its *trust* to hold the property of the *trust* in *your* name and to perform *your* obligations under *this document* or the *transaction documents* to which it is expressed to be a party;
- (e) *you* cease to be entitled to be indemnified out of, or have a lien over, the assets of the *trust* in respect of its obligations under *this document* or *transaction documents*; or

*variable rate loan* means the *facility* provided under *this document* in relation to which the *interest rate* is the *base rate* plus the *margin*, as nominated in Item 6 of the *schedule*;

*we* and *us* means BOQ Specialist – a division of Bank of Queensland Limited ABN 32 009 656 740 AFSL and Australian credit licence No. 244616 and *our* and *us* have corresponding meanings; and

*you and your* means the person described in Item 3 of the *schedule* as the Customer and *your* has a corresponding meaning.

## 53 Interpretation

- (a) In *this document*, unless the context indicates otherwise, reference to:
  - (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
  - (iv) a party to *this document* or another agreement or document includes the party's executors, administrators, successors and permitted substitutes or assigns;
  - (v) a statute, regulation or provision of a statute or regulation (*statutory provision*) includes that *statutory provision* as amended or re-enacted; a statute, regulation or provision enacted in replacement of that *statutory provision*; and another regulation or other statutory instrument made or issued under that *statutory provision*;
  - (vi) "this security" means the *security interests* created by *this document*;
- (b) accounting standards is a reference to the accounting principles and practices applying

- by law or otherwise generally accepted in Australia, consistently applied;
- (c) "law" includes a reference to common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (d) the "Banking Code of Practice" is a reference to the 2019 version of the Australian Banking Association's Banking Code of Practice including any amendments from time to time which have been published by the Australian Banking Association and formally adopted by us.
- (e) an agreement or document including *this document* is to the agreement or document as amended, novated, supplemented or replaced, except to the extent prohibited by *this document*;
- (f) any thing (including an amount) is a reference to the whole and each part of it;
- (g) an "asset" includes any real or personal, present or future, tangible or intangible property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived from the property or asset;
- (h) If there is any inconsistency between the provisions of *this document* and the provisions of any other *transaction document*, the provisions of the *transaction document* will govern and apply to the extent of the inconsistency.

- (vi) in connection with an agreement which *you* request not being provided in accordance with *your* request; or
- (vii) under any indemnity *we* give a *controller* or administrator appointed:
- (A) in respect of *you* or a *guarantor* providing a security; or
- (B) over any *security interest*.
- (b) The indemnity from *you* includes liability, loss or *costs* of the type referred to above that are suffered or incurred by:
- (i) any receiver or attorney appointed under *this document* or a security;
- (ii) any of *our* employees, officers, agents, contractors or authorised officers; or
- (iii) any other person such as a lessee, purchaser or occupier of the *security interest* to whom *we* may have a liability in respect of the *security interest*,
- but it does not include liability, loss or *costs* to the extent caused by *our* or their mistake, error, fraud, negligence or wilful misconduct.
- (c) *You* have to pay these amounts within 10 business days after *we* ask if a judgment, order or proof of debt in connection with the total amount owing is expressed in a currency other than that in which the total amount owing is due, then *you* indemnify *us* against, and must pay *us* on demand for:
- (i) any difference arising from converting the other currency, if the exchange rate *we* use for converting currency when *we* receive a payment in the other currency is less favourable to *us* than the exchange rate used for the purpose of the judgment, order or acceptance of proof of debt; and
- (ii) the *costs* of conversion.

## Part B – Large Business Transactions

This Part B of *this document* applies to Large Business Transactions. It applies in addition to the other parts of *this document* and any *schedule* that applies to *this document*.

### 54 Indemnity

- (a) In addition to the indemnities *you* grant to *us* in Part A, *you* indemnify *us* against, and must pay *us* on demand for any liability, direct loss or reasonable *costs* *we* suffer or incur:
- (i) in connection with *us* or any person acting on our behalf exercising, or not exercising, rights under an agreement;
- (ii) or in connection with a *security interest*, or *this document*;
- (iii) as a result of doing anything that *we* agree to do under any agreement at *your* request or consequent upon *your* default;
- (iv) *our* reliance on a notice from *you* or purporting to be from *you* or from a person authorised by *you*;
- (v) any loss arising from the reduction in the overall effective rate of return received by *us* under an agreement as determined by *us* acting reasonably;

### 55 Events of Default

- (a) In addition to any *event of default* under clause 20, it is an *event of default* under *this document* or any agreement if any of the following occur:
- (i) *you* by *your* conduct or in writing inform *us* that *you* are not or do not intend to be bound by that agreement;
- (ii) *you* fail to comply with any other provision of that agreement and that failure continues for 7 days after notice from *us* stipulating that failure;
- (iii) *your* failure to assist *us* to apply to register a financing statement in relation to a *security interest* created by *this document* and any agreement in accordance with the *PPS Act*;
- (iv) a failure to comply with any requirements under the *PPS Act* in relation to a *security interest* created by *this document* or any agreement which results in *us* not having the highest

priority available under the *PPS Act* with respect to that *security interest*;

- (v) *you* repudiate any other hiring or lease *you* have with *us*;
- (vi) *you* are in default under any other agreement, loan or financial arrangement with *us* and due to that default *we* are entitled to *terminate* that other agreement, loan or financial arrangement or require that money owing under it become immediately due and payable;
- (vii) there is material adverse change in *your* circumstances; or
- (viii) *you* breach an essential term or condition of any other agreement *you* have with *us*.
- (ix) If an *event of default* occurs under an agreement, *we* may without prejudice to any of *our* other rights:
  - (A) treat that agreement as repudiated;
  - (B) accept the repudiation; and
  - (C) by notice in writing terminate that agreement and *your* right to possession.

*We* may exercise this right despite any delay or previous waiver by *us*.

## 56 Termination

- (a) *We* have the right to *terminate our* obligations under *this document* at any time for any reason; and
- (b) *you* acknowledge that there is no agreement, arrangement or understanding between *you* and *us* that *we* may *terminate our* obligations under *this document* only when a particular event occurs or does not occur.
- (c) Variation

In addition to changes *we* can make to *this document* and to any agreement *we* can:

- (i) make changes required to comply with any law, code or guidance or requirement of a regulator, or a decision of a court or other dispute resolution process;
- (ii) change interest rates, discount rates or holding rates or overdue rates (including any component of them such as the margin). This includes increasing, decreasing, renaming or substituting rates. It also includes adding, removing or changing margins;
- (iii) change the amount, frequency, timing or method of calculation of payments;
- (iv) change the method or frequency of calculation, or crediting or debiting interest;
- (v) change *fees* and charges, which includes introducing or removing *fees*

and charges and changing the amount, method of calculation, frequency of charging or timing of payment of them; and

- (vi) any other matter or thing expressly permitted elsewhere in this *document* or any agreement.

**Executed as an agreement.**

## ACKNOWLEDGEMENT AND CONSENT

By signing this Loan with Specific Security Agreement ("Facility"), *you* confirm that *you* have read and acknowledge the following.

### APPLICATION

If *your* financial details change, including annual income and regular expenses, *you* acknowledge that *you* must give BOQ Specialist prompt notice of such changes. You acknowledge that BOQ Specialist relies on this information being kept up to date and complete.

You acknowledge and agree that the information that *you* provide in connection with *your* application for credit is true and correct to the best of *your* knowledge and belief and *you* have disclosed to BOQ Specialist all matters that are material to enable BOQ Specialist to assess *your* creditworthiness.

### CO-BORROWER

It is important that *you* understand the difference between being a co-borrower and a guarantor.

Co-borrower: As a Co-borrower *you* are equally responsible for the repayment of the loan. Where the other borrower/s won't or can't repay the loan, *you* are responsible for repaying the whole loan. This can affect *your* credit eligibility.

Guarantor: A guarantor provides a *guarantee*, which is a promise to repay the borrower's debt if they are unable to do so. Certain legal protections may apply to a guarantor that would not otherwise apply to a co-borrower.



## SCHEDULE 2 – FEE SCHEDULE FOR LOAN WITH SPECIFIC SECURITY AGREEMENT

The following *fees* and charges are payable by *you*. Information about current standard *fees* and charges is available on request.

In the case of an inconsistency between the *fees* and charges specified in this *fee schedule* and the *fees* and charges specified in a *schedule* to a *facility*, the *schedule* shall prevail.

Fee	Description of Fee	Amount
Documentation or establishment Fee	Charged for set up and roll over of the Facility	As per <i>schedule</i>
Legal Fee (including settlement and agent <i>fees</i> )	Charged when solicitors need to be involved with matters relating to the documentation and settlement of loans	External Costs <sup>1</sup>
Valuation Fee(for commercial property)	Charged for external property valuation <i>costs</i> where a property valuation is required.	External Costs <sup>1</sup>
Quantity Surveyors Fees	Charged for external services provided by a Quantity Surveyor on construction facilities where these services are deemed by Us as required.	External Costs <sup>1</sup>
Variation Fee (including increase, extension, substitution, novation)	Charged for any variations made to the loan that need documentation	\$395-\$950
Government Mortgage Registration Fee	Charged when a mortgage is registered with the relevant Land Titles Office of each state	External Costs <sup>1</sup>
SWIFT Fee	Charged if sending payment via SWIFT	\$30
Bank Cheque Fee	Charged if sending payment via Bank Cheque (per bank cheque)	\$25
Discharge Fee	Charged each time a security is discharged (per security)	\$150 (PPSR security) \$250 (property)
Substitution/Assignment/Novation Fee	Charged when substituting, assigning or novating a contract	\$450 plus any applicable External Costs <sup>1</sup>
Consent to lease	Charged when a consent to registration of lease and production of Certificate of Title is required	\$395
Trust Deed Review	Charged when a trust deed requires review	\$220
Application Reassessment Fee	Charged when an application is reassessed	\$250
Settlement Cancellation Fee	Charged if a booked settlement does not proceed	\$150 per cancellation
Additional Valuation Fee	Charged for additional valuation required by <i>us</i>	Not ascertainable at the disclosure date
Payment Dishonour Fee	Charged each time a cheque or payment made by <i>you</i> is dishonoured	\$45 for each dishonoured payment
<i>Break Costs</i>	Payable if <i>you</i> prepay an amount at a time when a <i>fixed rate</i> applies to the <i>facility</i>	Not ascertainable at the disclosure date
Termination Fee	Payable if <i>you</i> prepay the <i>principal outstanding</i> in full before the <i>expiry date</i>	Not ascertainable at the disclosure date
Arrears Management and Administration Fee	Charged for the management of any contract in arrears	\$140 per hour per staff required to attend
Direct Debit Processing Fee	Charged for each time a direct debit is received from <i>you</i>	\$2.99
Information Fee	Charged each time <i>you</i> request <i>us</i> to provide information about <i>your facility</i> , including statements.	\$80 per hour per staff required to attend
Special Attendance Fee	Charged if <i>you</i> require any special attendance (for example, the production of the title for any reason, consent to a subsequent mortgage, variation or substitution of security)	\$450 plus any applicable External Costs <sup>1</sup>
Credit Card Payment Fee	Charged when loan payment via BOQS credit card	1.5% of payment amount

<sup>1</sup>External costs represent the costs incurred by Us with a third party and passed onto You.