

Loan with Specific Security Agreement Terms and Conditions – Consumer

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 (e.g. 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 may cover a future credit contract and variations of an existing facility (but if they increase your liability under the guarantee, you must agree to this).**

Important note *This document* does not contain all the terms of your facility 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 – Loan with Specific Security Agreement – Consumer” which forms part of *this document*.

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 the schedule.

BETWEEN *we / us*

AND *you*

AND *the guarantor.*

Does the *National Credit Code* apply to *this document*? Some provisions of *this document* are stated to apply only if the *National Credit Code* applies, or does not apply, to *this document*.

The *National Credit Code* is a national law designed to protect consumers in relation to credit contracts, mortgages, guarantees and other matters.

The *National Credit Code* will apply to *this document* in relation to *you* if *you* are an individual and the credit is provided predominantly for personal, domestic or household use, or for investment in residential property (but not other forms of investment).

The *National Credit Code* will apply to *this document* in relation to a guarantor that is an individual if the *National Credit Code* applies to *this document* in relation to *you*.

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) After deduction of any fees and charges payable on or before the *drawdown date* (as set out in the *schedule*) which *you* have not already paid, *we* will pay the remainder of the *advance* to *you* or as *you* direct.
- (d) Unless *we* otherwise agree, *you* will not be entitled to redraw any part of the *advance* repaid.
- (e) *You* may only use the *facility* for the purposes specified in 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 (***drawdown date***).
- (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, and no *transaction party* has withdrawn from any transaction document;
- (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 specified in the *schedule* as being payable by you before the facility is to be made available; and
- (d) we have received any additional documentation or information we reasonably require in a form and substance satisfactory to us.

You cannot make a drawing under the *facility* if there is an *event of default* subsisting.

4 Interest on the advance

4.1 Interest

- (a) Interest accrues daily on the *principal outstanding* 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.
- (b) 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).
- (c) 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*.

4.2 Interest periods

- (a) Subject to clause 4.2(d), each *interest period* for the *advance* will be a period of one month, usually commencing on the same date as the date of the *advance* in each subsequent month during the term.

- (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 after the *expiry date* ends on the *expiry date*.
- (d) We may change the *interest rate* (including a *base rate*), any *margin*, and the *interest period* in accordance with clause 41.
- (e) You can obtain information on the current *interest rate* from us on request.

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 under Prepayments in the *schedule*) 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 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 rights under clause 21, you must pay to us the whole of any remaining *principal outstanding* together with accrued interest and fees incurred up until the date of termination but not yet included in the *principal outstanding*, the *termination fee* and break costs (if any).

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) We may make changes in relation to your repayments in accordance with clause 41.

8 Repayment on 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 of overdue interest

If you do not pay any amount you 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 you under or in respect of any *transaction document* (including interest payable under clauses 4 and 9):

- (a) daily up to (but excluding) 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.

You must pay interest accrued under clause 9 on demand by us and we may debit it to the *facility* monthly.

This clause does not affect your obligation to make payments when they are due and payable.

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

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

However, you may have to tell us about the circumstances before we can do these things or provide you 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 at least every six months a statement for this *facility*.

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 11.00 am Australian eastern standard time on the due date.
- (b) 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
 - (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.
- (c) 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 Fees and charges

- (a) You must pay us the *fees* shown in the *schedule* and we may debit them to the *facility* as they fall due.
- (b) We can make changes to *fees* in accordance with clause 41.
- (c) Information on current *fees* charges is available on request.

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 the *secured money*.
- (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.

(c) This security interest is a fixed charge.

14 Mandatory action to grant security interests

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 take all reasonable steps within your power 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 Representations, warranties and undertakings made by each *transaction party*

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

- (a) **(power)** the *transaction party* has the power to enter into and perform its obligations under the *transaction documents* to which it is a party, to carry out the transactions contemplated by them and to carry on its business (if any) as now conducted;
- (b) **(compliance)** the *transaction party* has complied with, and will continue to comply with all laws, lawful requirements of any *government agency* and other obligations binding on it which affect or relate to any of the *secured property*;
- (c) **(event of default)** no event of default or potential event of default has occurred;
- (d) **(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; and

- (ii) the validity and enforceability of those documents and the effectiveness or priority of the *securities* has been obtained or effected, is in full force and effect, has been complied with and all applicable fees have been paid;

- (e) **(accuracy of information)** all information provided by the *transaction party* to us is true in all material respects at the date of *this document* or, if later, when provided. Neither that information nor the *transaction party's* conduct and the conduct of anyone on their behalf in relation to the transactions contemplated by the *transaction documents*, was or is misleading in any material respect, by omission or otherwise;
- (f) **(transaction party details)** the *transaction party* details as set out in the *schedule* are correct and you will notify us at least 14 days before:
 - (i) You or, the *trust* (if you enter into *this document* as a *trustee*) or a *guarantor* 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 a *guarantor*, or any ABN or ARSN allocated to the *trust* 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);
- (g) **(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 correct; and
 - (ii) if you acquire any motor vehicles which are *secured property* 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;
- (h) **(benefit)** it (or its beneficiaries if it is a trustee) benefits by entering into the *transaction documents* to which it is a party;

- (i) **(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;
- (j) **(taxes)** the *transaction party* has and will pay all *taxes* payable by it when due;
- (k) **(ownership of secured property)** *you* have good title to the secured property free from any security interest other than permitted security interests;
- (l) **(control)** no person other than *us* has control (as defined in the PPS Act) of the *secured property*; and
- (m) 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 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 only genuine parts are used for repairs and that replacement parts are the same or better quality than those fitted to the *secured property* when the secured property was purchased by *you*;
- (g) replace any of the *secured property* which become damaged or destroyed with new articles of a similar nature and value;
- (h) do whatever is reasonably necessary or desirable 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* is capable of registration, keep the *secured property* registered;
- (m) give *us* *reasonable* access to the *secured property*, upon reasonable notice, to enable *us* at any time to inspect the *secured property*;
- (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, if the secured property is a motor vehicle, it is being used for personal, domestic or household purposes, and notify *us* if any *secured property* is moved from the *premises* by anyone else, and, wherever possible, notify *us* where it is 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*.

17.2 Insurance

- (a) You must:
 - (i) insure and keep insured the *secured property* with an insurer reasonably approved by *us* for their full insurable value against loss, theft, damage or destruction and such other risks as *we* may require subject to such terms and conditions and exceptions as *we* may require from time to time;
 - (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 reasonably approved by *us* from time to time;
 - (iii) punctually pay all premiums under any insurance policy relating to the *secured property* 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 relating to the *secured property*;
 - (vi) notify *us* in writing as soon as any event happens which entitles a claim to be made under any insurance relating to the *secured property*; and
 - (vii) not settle or compromise any insurance claim relating to the *secured property* 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 *secured property* insured or to 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 relating to the *secured property* 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.

17.3 Survival of undertakings

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

18 Negative pledge by transaction parties

Without *our* prior written consent, 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;
 - (ii) sell or dispose of any *secured property*;
 - (iii) 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);
 - (iv) part with possession of any *secured property*;
 - (v) give control of any *secured property* to any person other than *us*;

- (vi) waive any of *your* rights or release any person from its obligations in connection with any *secured property*; or
- (vii) assign or otherwise deal in any other way with the *transaction party's* interest in the *secured property*.

19 Other security interests

19.1 Creation of security interests

If the law allows you to create another *security interest* over the *secured property* without *our* consent, clause 19 does not operate to require you to obtain *our* consent before creating that other *security interest*. However:

- (a) 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
- (b) 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, *we* will have no obligation to allow you to draw down upon any further credit which is available to you under the *facility*.

19.2 Priority agreement

If *we* so request, *you* must take all reasonable steps within your power to obtain an agreement reasonably 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, in the absence of a clear error.

20 Events of default

20.1 List of events of default

Each of the following events listed in clause 20 is an *event of default* (whether or not it is in the control of any *transaction party*):

- (a) **(non payment)** a *transaction party* fails to pay any amount payable under *this document* when due;

- (b) **(insolvency)** an *insolvency event* occurs in relation to a *transaction party*;
- (c) **(creditor enforcement)** another creditor takes *enforcement proceedings* against a *transaction party*;
- (d) **(default under another arrangement)** early repayment is required under a separate financing arrangement a *transaction party* has with *us*, or default based action is taken by *us* against a *transaction party*, due to an *event of default* set out in this clause 20;
- (e) **(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 that relates to the *secured property*;
- (f) **(illegality)** it becomes unlawful for *you* or *us* to continue with *this document*;
- (g) **(misrepresentation)** a *transaction party* gives *us* information or makes a representation or warranty to *us* in relation to a *transaction document* which is materially incorrect or misleading (including through omission) and which has given rise to, or is likely to give rise to, a material increase to *our* risk under the *transaction documents*;
- (h) **(unapproved use)** *you* use the *facility* for a purpose not approved by *us*;
- (i) **(improper dealing with secured property)** a *transaction party* deals with, or attempts to deal with, any *secured property* in breach of *this document* or any *transaction document*, or any *security*, without *our* consent;
- (j) **(insurances)** *you* don't maintain insurance required by *this document*;
- (k) **(change of control)** if the *facility* is for business purposes, the legal or beneficial ownership, or management control, of a *transaction party* changes without *our* consent; or
- (l) **(change in status)** the status, capacity or composition of a *transaction party* changes without *our* consent.

20.2 Acting on events of default

We will only act on an *event of default* (other than an *event of default* under clause 20.1(a)) 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) a *transaction party's* ability to meet their financial obligations to *us* (or *our* ability to assess this);
- (b) *our* security risk (or *our* ability to assess it); or
- (c) *our* legal or reputation risk if the *event of default* is of a type referred to in subclauses 20.1(e), 20.1(g) or 20.1(h).

21 Consequences of default

21.1 If the *National Credit Code* applies

If we decide to act, and the *National Credit Code* applies to *this document*, we will give you a default notice unless:

- (a) we reasonably believe that we were induced by fraud to enter into *this document*;
- (b) we have made reasonable attempts to locate *you*, without success;
- (c) a Court authorises *us* to begin enforcement proceedings; or
- (d) we reasonably believe that urgent action is necessary to protect the *secured property*.

The default notice will specify the default, include any other information required by the *National Credit Code*, and give *you* at least 30 days to fix the default (if it can be fixed).

21.2 If the *National Credit Code* does not apply

If we decide to act, and the *National Credit Code* does not apply to *this document* (eg because *this document* relates to a loan to a business), we will give *you* a default notice specifying the default and give *you* a reasonable time to fix the default (if it can be fixed). That time will not be less than 30 days unless it's reasonable for *us* to act more quickly to manage a material and immediate risk relating to the nature of the relevant default, *your* particular circumstances or the value of the *secured property*.

21.3 If you don't fix the default

If *you* don't or can't fix the default, then at the end of the period specified in any default notice we have given *you* we can immediately:

- (a) stop *you* from accessing any undrawn part of the *advance*;
- (b) require *you* to pay the *secured money*;

- (c) enforce this document.

Enforcing *this document* means we can do one or more of the following as well as anything else the law allows *us* to do:

- (d) sue *you* for *secured money*;
- (e) take or give up possession of the *secured property* as often as we choose;
- (f) anything else the law allows the owner or receiver of the *secured property* to do, including improving, selling or leasing it.

22 Application of money

Subject to applicable laws, we may apply the money we receive under this document towards paying any part of the *secured money* we see fit.

23 Costs and expenses

23.1 Costs

On demand or as otherwise required under *this document* you must pay or reimburse *us* for the following costs, or we may debit them your account (so that they forms part of the *principal outstanding*):

- (a) **(transaction costs)** all *fees* and *costs* set out in the *schedule*;
- (b) **(duties)** any government charges or duties on receipts and withdrawals;
- (c) **(other costs)** *our* reasonable *costs* and *expenses* reasonably incurred in enforcing the *transaction documents* after *you* are in default.

Despite anything else in *this document*, any enforcement expenses incurred under *this document* for which *you* are or become liable must be reasonable enforcement expenses which are reasonably incurred.

24 GST

- (a) Unless otherwise expressly stated, all amounts referred to in this document do not include GST.
- (b) To the extent (if any) that GST is payable in respect of all or any part of a supply made by a party under or in connection with *this document* (including any indemnity or reimbursement amount), the consideration to be provided for that supply is increased by an amount equal to the GST payable by the supplying party.

25 Guarantee and Indemnity

Does the *National Credit Code* apply to this guarantee and indemnity?

The *National Credit Code* is a national law designed to protect consumers in relation to credit contracts, mortgages, guarantees and other matters.

The *National Credit Code* will apply to this clause 25 in relation to a guarantor that is an individual if the *National Credit Code* applies to *this document*.

The *National Credit Code* will apply to *this document* if you are an individual and the credit is provided predominantly for personal, domestic or household use, or for investment in residential property (but not other forms of investment).

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 *Banking Code of Practice* applies to *this document* or a *transaction document* (as relevant).

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

Where a *Code* 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 a *Code*. 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 this guarantee and indemnity it may have to pay *us* the relevant amounts that the *guarantor* may be liable for under the guarantee.
- (b) the *guarantor* can also withdraw from this guarantee and indemnity before we provide credit to you and in some circumstances after we provide credit.
- (c) the *guarantor* can also write *us* to limit its liabilities under this 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. We will provide information about the customer and *this document* or a *transaction document* (as relevant) in accordance with any applicable *Code*, and upon request.

If:

- (a) a *Code* 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 a *Code* or impose an obligation or liability which is prohibited by a *Code*,
- this guarantee and indemnity is to be read as if that provision were varied to the extent necessary to comply with the relevant *Code* 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* or any holding over under *this document*; and
 - (ii) except where the *guarantor* has limited its liability under this guarantee and indemnity (as specified in the *schedule*), the payment of the *secured money*.
- (b) 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*, any holding over under *this document*, or *your* death, insolvency or incapacity or because of any other act, omission or circumstance affecting *you* 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 in respect of any property. Subject to *us* having satisfied any relevant obligations *we* have under the Codes, the *guarantor* agrees to pay amounts due under this indemnity on demand from *us*.
- (c) This guarantee and indemnity constitutes continuing obligations despite any intervening payment, settlement or other thing and extends to all money owing under *this document*.
- (d) Subject to any restrictions imposed by the Codes, *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.
- (e) Except to the extent the *guarantor* has a right conferred by a Code, 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.
- (f) 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*.
- (g) Without limiting clause 25, as long as there is money owing under a *transaction document*, the *guarantor* may not without *our* prior written consent:
- (i) 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;
 - (ii) claim an amount in *your* insolvency or of any other *guarantor*; or
 - (iii) claim an amount from *you* or another *guarantor* under a right of indemnity or contribution.
- (h) 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.
- (i) 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; or

- (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.

However, if the guarantee and indemnity in clause 25 is one to which a *Code* applies, we cannot increase the guarantor's liabilities under the guarantee and indemnity in clause 25 by changing the terms of this document except in compliance with the *Code*.

- (j) 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.
- (k) In exercising *our* rights under *this document* (including in relation to the guarantee and indemnity in clause 25), we need not consider how the matter will affect the *guarantor* or act in the *guarantor's* interest. However, in choosing how to exercise *our* rights (including by not exercising them or delaying an exercise) we must have regard to *our* legitimate interest in recovering the *principal balance* and other *secured money* owing under *this document* and fees and charges payable by you under *this document*, and not act solely for the purpose of prejudicing the *guarantor*.

26 Effect of the Codes on the Guarantee and Indemnity

If a *Code* applies to the guarantee and indemnity in clause 25:

- (a) the maximum amount we can require the *guarantor* to pay under the guarantee and indemnity in clause 25 is not more than the sum of:
 - (i) *your* liabilities under this document; and
 - (ii) *our* reasonable enforcement expenses reasonably incurred in enforcing the guarantee and indemnity in clause 25; and
- (b) nothing in this document limits the *guarantor's* right to indemnity from *you* or

postpones or otherwise limits the *guarantor's* right to enforce the indemnity against *you*.

27 Trust

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

27.1 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*.

27.2 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*; and
- (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.

27.3 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*); and
- (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*;
 - (iv) if the *trust* is a unit trust, not permit any redemption of units in the *trust*; and
 - (v) tell *us* immediately it becomes aware if anything happens to prevent a *transaction party* from repeating any declaration in this clause.

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 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 nominated account* on the prior business day.
- (c) *We* may vary any details of this agreement or a direct debit request in accordance with clause 41.
- (d) *We* will not change the amount or frequency of the drawings without *your* prior approval.
- (e) *We* reserve the right to cancel the direct debit if three or more drawings are returned unpaid by *your* nominated financial institution and to arrange with *you* an alternate payment arrangement.
- (f) *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. 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 institution where the account is based.
- (c) It is *your* responsibility to advise *us* if *the nominated account* 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, as long as this doesn't materially prejudice a *transaction party's* rights or obligations under *this document*. *We* may also novate or otherwise transfer all or any of *our* rights or obligations under the *transaction documents* to any person, as long as this doesn't materially prejudice a *transaction party's* rights or obligations under *this 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.
- (d) Any person to whom *our* rights are transferred will have the same rights that *we* do under the *transaction documents* that are no greater than *our* rights.
- (e) *We* will give *you* notice of any exercise of *our* rights under this clause as soon as is practicable.

30 Financier

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

31 Further assurances

- (a) Each *transaction party* must, and must ensure that each other *transaction party*, does anything *we* reasonably 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*;
 - (viii) enable *us* to register the power of attorney in clause 36 or a similar power;
 - (ix) show whether *you* are complying with the *transaction documents*; or
 - (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* reasonable costs in connection with anything that *transaction party* is required to do under this clause.
- (c) This clause applies to anything *we* ask any *transaction party* to do in connection with the *PPS Act*.

32 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:

- (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*).

33 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, indemnifies *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 reasonable 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.

34 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*; or
 - (ii) posted to the recipient's address as set out in the *schedule* by prepaid ordinary post or airmail,
- (c) With *your* consent some *notices* (but excluding default *notices*) may be sent to *you* by email instead. If *you* specify an email address in the *schedule*, *you* consent to *us* sending *notices* in relation to *this document* to *you* by email to that address. While a consent is in effect, *we* need not send any *notices* in another way (such as by post) unless required to by law. *You* may withdraw a consent at any time.
- (d) 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 3rd *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.

- (e) 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, DX box or email address.

35 Approvals and consent

Whenever *you* need *our* consent or approval under this document, *we* will act reasonably and without unreasonable delay when deciding whether or not to give that consent or approval. *We* can impose reasonable conditions on any consent or approval *we* give under *this document*. *Our* consent or approval is only effective if it is in writing. *You* must comply with all conditions and requirements in any consent or approval *we* give, and *we* can charge a reasonable fee for giving our consent.

36 Attorneys

- (a) *You* appoint *us*, and each of *our authorised officers and* employees, individually as *your* attorneys. *You* may not revoke any of these appointments. If *we're* entitled to enforce *this document*, each attorney may do anything which *you* can lawfully authorise an attorney to do in connection with *this document* and the *secured property*.
- (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*.

37 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*.

38 Confidentiality

- (a) *We* may disclose any confidential information or documents:
 - (i) in enforcing a *transaction document* or in a proceeding arising out of or in connection with a *transaction document* or to the extent that *we* regard the disclosure as necessary to protect our interests;

- (ii) if required under a binding order of a government agency or any procedure for discovery in any proceedings;
 - (iii) if required under any law or any administrative guideline, directive, request or policy whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of responsible bankers or financial institutions similarly situated (except this clause does not permit us to disclose any information under section 275(4) of the *PPS Act* unless section 275(7) of the *PPS Act* applies);
 - (iv) as required or permitted by any *transaction document*;
 - (v) to our legal advisers and consultants; or
 - (vi) with *your* prior written consent, which must not be unreasonably withheld.
- (b) *You* may disclose any confidential information or documents if required under any law or any administrative guideline, directive, request or policy whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of responsible bankers or financial institutions similarly situated (except this clause does not permit you to disclose any information under section 275(4) of the *PPS Act*).
 - (c) Clause 38 survives the termination of *this document*.

39 Severability of provisions

A provision of a *transaction document* that is prohibited or unenforceable in any jurisdiction is ineffective in that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of that *transaction document* nor affect the validity or enforceability of that provision in any other jurisdiction.

40 Time of the essence

Time is of the essence of *this document*. If the parties agree to vary a time requirement:

- (a) the time requirement so varied is of the essence of this document; and
- (b) the agreement to vary the time requirement must be in writing.

41 Variations

41.1 We may make changes to the terms and conditions set out in *this document* at any time and without *your* consent as set out in this clause 41. We will tell *you* about any such changes in accordance with this clause.

41.2 Changes to interest rate(s)

- (a) If a variable *interest rate* (including a *base rate*) applies to *your facility*, we may change that *interest rate*. However, we can't change the *interest rate* during any period in which it is fixed.
- (b) If the change increases *your* obligations, we'll give you notice of the change on or before the day it takes effect, either by:
 - (i) giving *you* written notice; or
 - (ii) publishing a notice in a way permitted by the *National Credit Code* (e.g. in a newspaper which circulates nationally).
- (c) If we give *you* notice by publishing it, we'll also give you details of the change before or when your next account statement is given to you.
- (d) We may also change:
 - (i) any *margin* that applies to your *facility* (except during a period in which we've agreed to fix the *margin*); and
 - (ii) the *overdue* rate.

If the change reduces *your* obligations or extends the time for payment, we'll give you details of the change before or when we give *you your* next account statement. Otherwise, we'll give *you* written notice of the change at least 30 days before it takes effect.

41.3 Changes to how we calculate or debit interest

- (a) We may change how we calculate interest and the *interest period* (how often we debit interest to your *facility*).
- (b) If the change increases *your* obligations, we'll give *you* written notice at least 30 days before it takes effect.

41.4 Changes to repayments

- (a) We can change these aspects of your repayments:
 - (i) the amount;
 - (ii) the frequency;
 - (iii) when *you* must pay them; and
 - (iv) how we calculate them.
- (b) If we make any of these changes and the change reduces *your* obligations or extends the time to pay, we'll give *you* details of the change before or when we give *you* your next account statement. Otherwise, we'll give *you* written notice of the change at least 20 days before it takes effect.

41.5 Changes to fees

- (a) We may change these aspects of *our fees*:
 - (i) the amount *you* have to pay; and
 - (ii) when or how often *you* have to pay a *fee*,
 and we can also introduce new *fees*.
- (b) However, during any period in which the *interest rate* is fixed we can't make any change that would increase any *fee you* have to pay if *you* end this agreement early or prepay any amount.
- (c) If we make any of these changes and the change reduces *your* obligations or extends the time for payment, we'll give *you* details of the change before or when we give *you your* next account statement. Otherwise, we'll give *you* notice of the change at least 30 days before it takes effect, either by:
 - (i) giving *you* written notice; or
 - (ii) publishing a notice in a way permitted by the *National Credit Code* (e.g. in a newspaper which circulates nationally).
- (d) If we give *you* notice by publishing it, we'll also give *you* details of the change before or when we give *you your* next account statement.
- (e) If there is a change to a government charge that *you* must pay, or a new one is introduced, we'll notify *you* reasonably promptly after the government tells *us*, unless they publicise it themselves.

41.6 Other changes

- (a) We can make the following changes to any other term of *this document*:
- (i) changes to comply with, or reduce the risk of non-compliance with, any laws, codes of practice, or regulatory guidance;
 - (ii) changes to comply with a decision, recommendation or guidance of a Court, ombudsman, regulator or other similar body;
 - (iii) changes to reflect a change in *our* systems or business procedures;
 - (iv) changes to enhance the security of *your facility*;
 - (v) changes to simplify *this document*;
 - (vi) changes that are administrative, or to correct a mistake or omission;
 - (vii) changes to, or as part of a process to, enable *us* to move *you* from a loan product that has been, or is to be, discontinued to another loan product;
 - (viii) changes to, or as part of a process to, migrate *your facility* to a new system;
 - (ix) changes to reflect amendments or improvements to the features of *your facility* or how it operates;
 - (x) changes to the ways you can access your facility;
 - (xi) changes that *we* reasonably believe are beneficial to *you*;
 - (xii) changes that in *our* reasonable opinion are necessary in order to manage a material compliance, prudential or operational risk; and
 - (xiii) any other changes that are reasonably necessary to protect *our* legitimate business interests.
- (b) If *we* make any of these changes and the change reduces *your* obligations or extends the time for payment, *we'll* give *you* details of the change before or when *we* give *you* your next account statement. Otherwise, *we'll* give *you* notice of the change at least 30 days before it takes effect.

41.7 Giving you written notice of changes

When *we* have to give *you* written notice of a change, *we* can do this in any of the ways described in clause 34.

41.8 Changes by agreement between us

You can also request *us* to make changes to the terms in *this document*. If *you* do, *we* will only be bound by them if *we* agree to them in writing.

42 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 that *we*, one of *our* agents or a receiver *we've* appointed caused the loss, costs or expense through mistake, error, fraud, negligence or wilful misconduct.

43 Your judgment

- (a) *You* will make *your* own judgment and decision in respect of the utilisation the *facility* independently and without reliance on *us*.
- (b) *You* should obtain *your* own financial advice and make *your* own enquiries in relation to *your* obligations including, but not limited to, taxation obligations under *this document*.

44 Right to re-value and consultants

- (a) *We* have the right to obtain a new or updated valuation in relation to any *secured property* at any time *we* reasonably consider that it is necessary to do so. *You* must pay *us* all costs reasonably incurred in connection with the valuation.
- (b) 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.

- (c) 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. Neither we, the valuer nor the consultant has any liability to you if you do rely on it and the report is wrong. You must obtain your own report if you wish to rely on it.

45 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.

46 Set-off

- (a) *Unless there is a genuine dispute, 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.*
- (b) Except to the extent *you* have a right of set-off granted by law which we cannot exclude by agreement (such as under the *National Credit Code*), *you* must pay all amounts due under the *transaction documents* in full without setting off amounts *you* believe *we* owe *you*.
- (c) If *you* believe that *we* owe *you* an amount in relation to *this document* (for example, if *you* believe that *we* have not complied with *our* obligations under *this document*) *you* may raise that claim through *our* dispute resolution process described in clause 49.
- (d) If *you* are in default, *we* may use any money *you* have in another account with *us* towards paying any amount that is due and payable under this document that hasn't been paid (this is known as "combining accounts"). *We* may combine

accounts without giving you any notice but we will tell *you* afterwards.

47 Counterparts

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

48 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.

49 Disputes

49.1 Our service commitment

- (a) At BOQ Specialist, we are committed to providing our customers with innovative banking solutions and the best customer service experience.
- (b) 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.

49.2 How to contact us

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

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

49.3 How will your complaint be handled?

- (a) 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.
- (b) 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.

49.4 What to do if you feel your complaint has not been resolved

- (a) 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

- (b) 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.

49.5 What to do if you are experiencing financial difficulties

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.

50 Consent to Recording

You:

- (a) consent to the recording of all telephone conversations between *us* and *you* or any person representing *you* or *us* in connection with *this document* or any *transaction document*; and
- (b) agree that such recordings may be used by *us* for *our* own purposes including training, confirmation of instructions, security and, where we deem necessary, in the resolution of a dispute between the parties and may be submitted in evidence in any legal or administrative proceedings relating to *this document* or a *transaction document*.

51 National Credit Code, Banking Code of Practice and ASIC Act

- (a) This clause applies to the extent that a *Code*, or the unfair contract terms provisions of the *ASIC Act*, applies to *this document*.
- (b) If:
 - (i) a *Code* or the legislation would otherwise make a provision of *this document* illegal, void or unenforceable; or
 - (ii) a provision of *this document* would otherwise contravene a requirement

of a *Code* or the legislation or impose an obligation or liability which is prohibited by the *Code* or the legislation,

this *document* is to be read as if that provision were varied to the extent necessary to comply with the *Code* or the legislation or, if necessary, omitted.

- (c) If a *Code* or the legislation is inconsistent with *this document*, the *Code* overrides *this document* to the extent of the inconsistency.

52 General

52.1 Banking Code of Practice

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*.

52.2 Financial difficulty

- (a) This clause 52.2 applies to the extent that the *Banking Code of Practice* applies to *this document*.
- (b) 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.

53 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 and fees);

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

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, lodgment, 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* 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* or any of *our related bodies corporate*;

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: 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;

Code means each of the National Credit Code and the Banking Code of Practice;

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*;

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 *schedule*;

fees means any fees specified in the *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;

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 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 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*:

- (a) it is bankrupt, insolvent or insolvent under administration, or in *liquidation*;
- (b) if it is a body corporate, it is unable to pay its debts as they fall due;
- (c) it is taken (under section 459F(1) of the *Corporations Act*) to have failed to comply with a statutory demand;
- (d) it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act*;
- (e) or 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 per annum rate of interest specified in the *schedule* as at the *disclosure date*, and may be:

- (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 the *schedule*;

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, or bankruptcy;

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*;
- (b) *our* rights and remedies under the *transaction documents*;
- (c) the business, operation, condition (financial or otherwise), cashflows or prospects of any *transaction party* (taken as a whole);
- (d) the effectiveness or priority of any *security interest* under any *transaction document*; or
- (e) the validity or enforceability of any *transaction document*;

National Credit Code means the National Credit Code in Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cth) and any Regulations made for the purpose of the *National Credit Code*, including without limitation Chapter 7 of the *National Consumer Credit Protection Regulations 2010* (Cth). The note at the beginning of *this document* explains when the *National Credit Code* applies to *this document*;

nominated account means the account referred to in the Direct Debit Request in the *schedule* (if any);

overdue rate means the interest rate plus 4%;

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 any capitalised interest, fees and any other amounts);

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 repayment schedule in the *schedule*;

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

residual amount has the meaning given to it in the *schedule*;

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

secured money means all amounts that are owing or payable by a *transaction party* to us, or will be owing or payable in the future:

- (a) under any transaction document;
- (b) whether by a *transaction party* alone or jointly or separately with any other person; and
- (c) whether 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
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a *profit à prendre*), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment; or
- (e) 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*;

you are a *small business* if:

- (a) you are a small business within the meaning given in the *Banking Code of Practice*; or
- (b) this agreement is a small business contract within the meaning of the *Australian Securities Investments Commission Act 2001*;

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;

termination fee means an amount set out in the schedule of this agreement;

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

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

transaction documents means:

- (a) this document; and
- (b) the securities;

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*;

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 the *schedule*;

we 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 means the person described in the *schedule* as the Client and *your* has a corresponding meaning.

54 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) 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*;
- (e) any thing (including an amount) is a reference to the whole and each part of it;
- (f) 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;
- (g) 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;
- (h) A reference to "this guarantee and indemnity" is a reference to the guarantee and indemnity terms which are set out in clause 25; and
- (i) the "Banking Code of Practice" is a reference to 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.

Executed as an agreement.

Information statement for you, the borrower

This information statement only applies to you if the *National Credit Code* applies to this document.

THINGS YOU SHOULD KNOW ABOUT YOUR PROPOSED CREDIT CONTRACT

This statement tells you about some of the rights and obligations of yourself and your credit provider. It does not state the terms and conditions of your contract.

If you have any concerns about your contract, contact your credit provider and, if you still have concerns, your credit provider's external dispute resolution scheme, or get legal advice.

THE CONTRACT

1 How can I get details of my proposed credit contract?

Your credit provider must give you a precontractual statement containing certain information about your contract. The precontractual statement, and this document, must be given to you before—

- your contract is entered into; or
- you make an offer to enter into the contract;
- whichever happens first.

2 How can I get a copy of the final contract?

If the contract document is to be signed by you and returned to your credit provider, you must be given a copy to keep. Also, the credit provider must give you a copy of the final contract within 14 days after it is made. This rule does not, however, apply, if the credit provider has previously given you a copy of the contract document to keep.

If you want another copy of your contract, write to your credit provider and ask for one. Your credit provider may charge you a fee. Your credit provider has to give you a copy—

- within 14 days of your written request if the original contract came into existence 1 year or less before your request; or
- otherwise within 30 days of your written request.

3 Can I terminate the contract?

Yes. You can terminate the contract by writing to the credit provider so long as—

- you have not obtained any credit under the contract; or

- a card or other means of obtaining credit given to you by your credit provider has not been used to acquire goods or services for which credit is to be provided under the contract.

However, you will still have to pay any fees or charges incurred before you terminated the contract.

4 Can I pay my credit contract out early?

Yes. Pay your credit provider the amount required to pay out your credit contract on the day you wish to end your contract.

5 How can I find out the pay out figure?

You can write to your credit provider at any time and ask for a statement of the pay out figure as at any date you specify. You can also ask for details of how the amount is made up.

Your credit provider must give you the statement within 7 days after you give your request to the credit provider. You may be charged a fee for the statement.

6 Will I pay less interest if I pay out my contract early?

Yes. The interest you can be charged depends on the actual time money is owing. However, you may have to pay an early termination charge (if your contract permits your credit provider to charge one) and other fees.

7 Can my contract be changed by my credit provider?

Yes, but only if your contract says so.

8 Will I be told in advance if my credit provider is going to make a change in the contract?

That depends on the type of change. For example—

- you get at least same day notice for a change to an annual percentage rate. That notice may be a written notice to you or a notice published in a newspaper.
- you get 20 days advance written notice for—
- a change in the way in which interest is calculated; or
- a change in credit fees and charges; or
- any other changes by your credit provider; except where the change reduces what you have to pay or the change happens automatically under the contract.

9 Is there anything I can do if I think that my contract is unjust?

Yes. You should first talk to your credit provider. Discuss the matter and see if you can come to some arrangement.

If that is not successful you may contact the AFCA scheme. The AFCA scheme is a free service established to provide you with an independent mechanism to resolve specific complaints. Australian Financial Complaints Authority can be contacted at:

Phone: 1800 931 678

Website: www.afca.org.au

Postal address:

Australian Financial Complaints Authority
GPO Box 3
MELBOURNE VIC 3001

Alternatively you can go to the court. You may wish to get legal advice, for example from your community legal centre or Legal Aid.

You can also contact ASIC, the regulator, for information on 1300 300 630 or through ASIC's website at www.asic.gov.au.

INSURANCE

10 Do I have to take out insurance?

Your credit provider can insist you take out or pay the cost of types of insurance specifically allowed by law. These are compulsory third party personal injury insurance, mortgage indemnity insurance or insurance over property covered by any mortgage. Otherwise, you can decide if you want to take out insurance or not. If you take out insurance, the credit provider can not insist that you use any particular insurance company.

11 Will I get details of my insurance cover?

Yes, if you have taken out insurance over mortgaged property or consumer credit insurance and the premium is financed by your credit provider. In that case the insurer must give you a copy of the policy within 14 days after the insurer has accepted the insurance proposal.

Also, if you acquire an interest in any such insurance policy which is taken out by your credit provider then, within 14 days of that happening, your credit provider must ensure you have a written notice of the particulars of that insurance.

You can always ask the insurer for details of your insurance contract. If you ask in writing your insurer must give you a statement containing all the provisions of the contract.

12 If the insurer does not accept my proposal, will I be told?

Yes, if the insurance was to be financed by the credit contract. The insurer will inform you if the proposal is rejected.

13 In that case, what happens to the premiums?

Your credit provider must give you a refund or credit unless the insurance is to be arranged with another insurer.

14 What happens if my credit contract ends before any insurance contract over mortgaged property?

You can end the insurance contract and get a proportionate rebate of any premium from the insurer.

MORTGAGES

15 If my contract says I have to give a mortgage, what does this mean?

A mortgage means that you give your credit provider certain rights over any property you mortgage. If you default under your contract, you can lose that property and you might still owe money to the credit provider.

16 Should I get a copy of my mortgage?

Yes. It can be part of your credit contract or, if it is a separate document, you will be given a copy of the mortgage within 14 days after your mortgage is entered into.

However, you need not be given a copy if the credit provider has previously given you a copy of the mortgage document to keep.

17 Is there anything that I am not allowed to do with the property I have mortgaged?

The law says you cannot assign or dispose of the property unless you have your credit provider's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or can not do with the property.

18 What can I do if I find that I cannot afford my repayments and there is a mortgage over property?

See the answers to questions 22 and 23.

Otherwise you may—

- if the mortgaged property is goods—give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;
- sell the property, but only if your credit provider gives permission first;

OR

- give the property to someone who may then take over the repayments, but only if your credit provider gives permission first.

If your credit provider won't give permission contact the AFCA scheme for help.

If you have a guarantor, talk to the guarantor who may be able to help you.

You should understand that you may owe money to your credit provider even after mortgaged property is sold.

19 Can my credit provider take or sell the mortgaged property?

Yes, if you have not carried out all of your obligations under your contract.

20 If my credit provider writes asking me where the mortgaged goods are, do I have to say where they are?

Yes. You have 7 days after receiving your credit provider's request to tell your credit provider. If you do not have the goods you must give your credit provider all the information you have so they can be traced.

21 When can my credit provider or its agent come into a residence to take possession of mortgaged goods?

Your credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the National Credit Code.

GENERAL

22 What do I do if I cannot make a repayment?

Get in touch with your credit provider immediately. Discuss the matter and see if you can come to some arrangement. You can ask your credit provider to change your contract in a number of ways—

- to extend the term of the contract and reduce payments; or
- to extend the term of your contract and delay payments for a set time; or

- to delay payments for a set time.

23 What if my credit provider and I cannot agree on a suitable arrangement?

If the credit provider refuses your request to change the repayments, you can ask the credit provider to review the decision if you think it is wrong.

If the credit provider still refuses your request you can complain to the AFCA scheme that your credit provider belongs to. Further details about this scheme are set out below in question 25.

24 Can my credit provider take action against me?

Yes, if you are in default under your contract. But the law says that you cannot be unduly harassed or threatened for repayments. If you think you are being unduly harassed or threatened, contact the AFCA scheme or ASIC, or get legal advice.

25 Do I have any other rights and obligations?

Yes. The law will give you other rights and obligations. You should also **READ YOUR CONTRACT** carefully.

IF YOU HAVE ANY COMPLAINTS ABOUT YOUR CREDIT CONTRACT, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING THE AFCA SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT THE AFCA SCHEME OR GET LEGAL ADVICE.

THE AFCA SCHEME IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. THE AFCA SCHEME CAN BE CONTACTED AT:

PHONE: 1800 931 678

WEBSITE: www.afca.org.au

**POSTAL ADDRESS:
Australian Financial Complaints Authority
GPO Box 3
Melbourne VIC 3001**

PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.

Information statement for the *guarantor*

This information statement applies to a *guarantor* if the *National Credit Code* applies to this document in relation to that *guarantor*.

In this information statement “you” and “your” refer to the *guarantor*.

THINGS YOU SHOULD KNOW ABOUT GUARANTEES

This information tells you about some of the rights and obligations of yourself and the credit provider. It does not state the terms and conditions of your guarantee.

GUARANTEES

1 What is a guarantee?

A promise by you that the person who is getting credit under a credit contract (the **debtor**) will keep to all the terms and conditions. If that person does not do so, you promise to pay the credit provider all the money owing on the contract (and any reasonable enforcement expenses) as soon as the money is asked for, up to the limit, if any, stated in the guarantee. If you do not pay, then the credit provider can take enforcement action against you which may result in the forced sale of any property owned by you such as your house.

2 How do I know how much the debtor is borrowing and how the credit charges are worked out?

These details are on the copy of the credit contract or proposed credit contract that you should be given before you sign the guarantee.

3 What documents should I be given?

Before you sign the guarantee you should get—

- the document you are reading now; and
- a copy of the credit contract or proposed credit contract.

Your guarantee is not enforceable unless you get a copy of the credit contract or proposed credit contract before you sign.

Within 14 days after you sign the guarantee and give it to the credit provider, the credit provider must give you a copy of—

- the signed guarantee (if you do not already have a copy of the guarantee); and
- the credit contract or proposed credit contract (if you do not already have a copy of the contract).

4

Can I get a statement of the amount that the debtor owes?

Yes. You can ask the credit provider at any time for a statement of the amount the debtor currently owes or any amounts credited or debited during a period you specify or any amounts which are overdue and when they became overdue or any amount payable and the date it became due.

The credit provider must give you the requested information—

- within 14 days if all the information requested related to a period 1 year or less before your request is given; or
- otherwise within 30 days.

This statement must be given to you in writing if you ask for it in writing but otherwise may be given orally.

You may be charged a fee for the statement.

You are not entitled to more than 1 written statement every 3 months.

5 How can I find out the payout figure?

You can write to the credit provider at any time and ask for a statement of the amount required to pay out the credit contract as at any date you specify. You can also ask for details of the items that make up the amount.

The credit provider must give you the statement within 7 days after you give your request to the credit provider. You may be charged a fee for the statement.

6 What other information can I get?

You can write to the credit provider and ask for a copy of—

- the guarantee; or
- any credit-related insurance contract (such as insurance on mortgaged property) the credit provider has; or
- a notice previously given to you, the debtor or the mortgagor under the National Credit Code.
- The credit provider must give you the requested copy—
 - within 14 days of your written request if the contract came into existence 1 year or less before the request was given to the credit provider; or
 - otherwise within 30 days.

The credit provider may charge you a fee.

Your request can be made any time up to 2 years after the end of the credit contract.

7 Can I withdraw from my guarantee?

You can withdraw from your guarantee at any time by written notice to the credit provider if the final credit contract is materially different from the proposed credit contract given to you before you signed the guarantee.

8 Can I limit my guarantee?

Yes, if it relates to a continuing credit contract (such as a credit card contract or an overdraft). In that case you can give the credit provider a notice limiting the guarantee so that it only applies to:

- credit previously given to the debtor; and
- any other amount you agree to guarantee.

9 Can my guarantee also apply to any future contracts?

No, unless the credit provider has given you a copy of the proposed new credit contract and you have given your written acceptance.

10 If my guarantee says I have to give a mortgage, what does this mean?

A mortgage means that you give the credit provider certain rights over any property you mortgage. If you default under your guarantee, you can lose that property and you might still owe money to the credit provider.

11 Should I get a copy of my mortgage?

Yes. It can be part of your guarantee or, if it is a separate document, you will be given a copy of the mortgage within 14 days after your mortgage is entered into.

12 Is there anything that I am not allowed to do with the property I have mortgaged?

The law says you cannot assign or dispose of the property unless you have the credit provider's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or can not do with the property.

13 What can I do if I find that I cannot afford to pay out the credit contract and there is a mortgage over my property?

See the answer to question 22.

Otherwise you may:

- if the mortgaged property is goods; give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;
- sell the property, but only if the credit provider gives permission first;

OR

- give the property to someone who may then pay all amounts owing under the guarantee or give a similar guarantee, but only if the credit provider gives permission first.

If the credit provider won't give permission, you may contact the credit provider's external dispute resolution scheme for help. You should understand that you may owe money to the credit provider even after the mortgaged property is sold.

The AFCA Scheme is a free service established to provide you with an independent mechanism to resolve specific complaints. and the AFCA Scheme can be contacted at:

Phone: 1800 931 678

Website: www.afca.org.au

Postal address:

Australian Financial Complaints Authority

GPO Box 3

MELBOURNE VIC 3001

14 Can the credit provider take or sell the mortgaged property?

Yes, if you have not carried out all of your obligations under your guarantee.

15 If the credit provider writes asking me where the mortgaged goods are, do I have to say where they are?

Yes. You have 7 days after receiving the credit provider's request to tell the credit provider. If you do not have the goods you must give the credit provider all the information you have so they can be traced.

16 When can the credit provider or its agent come into a residence to take possession of mortgaged goods?

The credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the *National Credit Code*.

17 If the debtor defaults, do I get any warning that the credit provider wants to take action against the debtor?

In most cases both you and the debtor get at least 30 days from the date of a notice in writing to do something about the matter. The notice must advise:

- why the credit provider wants to take action; and
- what can be done to stop it (if the default can be remedied); and
- that if the same sort of default is committed within 30 days of the date of the notice and is not remedied within that period, the credit provider can take action without further notice.

You should immediately discuss any warning notice with the debtor and consider getting independent legal advice and/or financial advice.

However, there will be no warning notice if—

- there is a good reason to think the debtor committed a fraud to persuade the credit provider to enter into the contract; or
- the credit provider has been unable to locate the debtor after making reasonable efforts to do so; or
- the court says so; or
- there is a good reason to think that the debtor has, or will, remove or dispose of mortgaged goods without the credit provider's consent, or that urgent action is necessary to protect mortgaged property.

18 When can the credit provider enforce a judgment against me?

When—

- the credit provider has judgment against the debtor and if the judgment amount has still not been met 30 days after the credit provider has asked the debtor in writing to pay it; or
- the court says so because recovery from the debtor is unlikely; or
- the credit provider has been unable to locate the debtor after making reasonable efforts to do so; or
- the debtor is insolvent.

19 If the debtor cannot be found and the credit provider intends to take legal action against me do I get any warning?

You may not. See the answer to question 17.

20 Can the credit provider take action against me without first taking action against the debtor?

Yes, but the credit provider will not be able to enforce any judgement against you except in the circumstances described in the answer to question 18.

21 How much do I have to pay the credit provider if the debtor defaults?

You have to pay what the debtor owes the credit provider, subject to any limit provided in the guarantee, plus the credit provider's reasonable expenses in making you honour your contract of guarantee.

GENERAL

22 What can I do if I am asked to pay out the credit contract and I cannot pay it all at once?

Talk to the credit provider and see if some arrangement can be made about paying.

If you cannot come to a suitable arrangement, contact your credit provider's external dispute resolution scheme.

There are other people, such as financial counsellors, who may be able to help.

23 If I pay out money for a debtor, is there any way I can get it back?

You can sue the debtor, but remember, if the debtor cannot pay the credit provider, he or she probably can not pay you back for a while, if at all.

24 What happens if I go guarantor for someone who is under 18 when he or she signs a credit contract?

You are responsible for the full debt if the contract of guarantee has a clear and obvious warning. The warning has to tell you that the courts might not let you sue the debtor if you have to pay out the credit contract for him or her.

25 Do I have any other rights and obligations?

Yes. The law does give you other rights and obligations. You should also **READ YOUR GUARANTEE** carefully.

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ACKNOWLEDGEMENT AND CONSENT

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

APPLICATION

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