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Loan Agreement – Related Parties

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Loan Agreement - Related Parties

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THIS **LOAN AGREEMENT** is dated the _____ day of _____ 20____.

PARTIES:

1. jw of
St, Bbb, VIC 111, (the lender);
2. hw of
St, Bbb, VIC 111, (the borrower).

RECITALS:

- A. The lender has agreed, at the request of the borrower, to provide a loan facility to the borrower, the principal amount of which is not to exceed \$100000.
- B. The lender and the borrower have agreed to enter into this agreement to set out the terms and conditions of the loan facility.

Definitions and interpretation

1. (1) *Definitions*

In this agreement, unless the contrary intention appears:

'advance' means an amount of \$100000 provided or, where the context requires, to be provided under this agreement by the lender to, or at the direction of, the borrower;

'authorised signatory' means:

- (a) where the borrower is a corporation, each person at any time and from time to time duly authorised by the borrower as a person empowered to sign, give or make all instruments, notices, communications and other documents required under this agreement or for the purposes of this agreement, a specimen of whose signature has at any time and from time to time been provided to the lender; and
- (b) where the borrower is a natural person, that person;

'bank' means, first, any body corporate authorised under Pt II of the Banking Act 1959 (Cth) to carry on general banking business in Australia, secondly, Commonwealth Bank of Australia and, thirdly, each bank constituted under a law of a state of the Commonwealth of Australia and authorised to carry on general banking business;

'business day' means, in respect of each payment or other transaction or calculation which needs to be made or done under this agreement or for the purposes of this agreement, a day on which business by and between banks may be carried on in Bbb, VIC.

'default interest rate' means a rate of 1.5 % per annum above the interest rate;

'drawdown date' means 01/01/2014 or such other date as the lender and the borrower agree in writing;

'event of default' means any of the events, omissions or occurrences specified in cl 10(2);

'interest rate' means 5.5 %;

'loan' means, at any time and from time to time, the principal amount of the advance outstanding at that time;

'related body corporate' means any body corporate which is related to the borrower within the meaning given to the term 'related' in s 9 of the Corporations Law;

'repayment date' means the date five (5) years from the drawdown date or such other date as the lender and the borrower agree in writing, subject to the provisions of this agreement relating to accelerated repayment of the loan; and

(2) *Interpretation*

- (a) Words importing the singular number include the plural and vice versa. Any gender includes the other genders. Any reference to a person includes a reference to a corporation, firm, authority, government or governmental agency.
- (b) A reference to legislation or to a legislative provision includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments, modifications or re-enactments of that legislation or legislative provision and any legislation or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision.
- (c) The clause headings in, and index to, this agreement are for reference purposes only and do not in any way influence or affect the meaning of this agreement.
- (d) A reference to any deed, agreement, licence, document or other instrument (including this agreement) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time.
- (e) A reference to any party to this agreement or to any other deed, agreement, licence, document or other instrument required under this agreement or for the purposes of this agreement includes that party's executors, administrators, substitutes, successors and permitted assigns.
- (f) Where under or pursuant to this agreement or anything done under this agreement the day on or by which any act, matter or thing is to be done is not a business day such act, matter or thing must be done on the immediately succeeding business day.
- (g) Where under or pursuant to this agreement or anything done under this agreement the day on or by which any act, matter or thing is to be done is the 29th, 30th or 31st day of any month in which such a day does not occur, such act, matter or thing must be done on the last day of that month.
- (h) References to clauses are references to clauses of this agreement.
- (i) A reference to winding up or bankruptcy includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in s 9 of the Corporations Law) and to the circumstances and events giving rise to or contributing to such condition or matters.

(3) *Sole agreement*

The covenants and provisions contained in this agreement exclusively and completely state the rights of the borrower with respect to the loan. This agreement supersedes all negotiations and prior agreements, whether written or oral, in respect of the loan. If there is any conflict or inconsistency between the terms, conditions and provisions of this agreement, the terms, conditions and provisions of this agreement will prevail.

(4) *Joint and several liability*

Where the borrower comprises more than one person, the covenants and agreements

on their part contained or implied in this agreement bind them jointly and each of them severally.

Conditions precedent to lender's obligation

2. (1) Conditions precedent

The lender's obligation to provide the loan to, or at the direction of, the borrower is subject to and conditional upon:

- (a) **corporate documents:** (if the borrower is a corporation) the borrower delivering to the lender a copy, certified by an authorised signatory of the borrower as complete, accurate and up-to-date, of the certificate of incorporation and memorandum and articles of association of the borrower;
- (b) **borrower's resolutions:** (if the borrower is a corporation) the borrower delivering to the lender a copy, certified by an authorised signatory of the borrower as complete and accurate, of a resolution of the board of directors of the borrower evidencing approval of this agreement and all matters required to be done by the borrower under or pursuant to this agreement, authorising the affixing of the common seal of the borrower to this agreement, and authorising appropriate officers as authorised signatories to execute or sign on behalf of the borrower all notices, communications and other documents and instruments required under this agreement or for the purposes of this agreement;
- (c) **specimen signatures:** the borrower delivering to the lender authenticated specimen signatures of its or their authorised signatories;
- (d) **execution of agreement:** the lender having received evidence satisfactory to the lender that the borrower has validly entered into, and become bound by the terms of, this agreement and that this agreement has, where necessary, been duly stamped;
- (e) **payment of fees:** the borrower having made the payments to the lender specified in cl 5 as being payable on or before the drawdown date;
- (f) **no default:** no event of default or event which, with the giving of notice or the lapse of time or both, would be an event of default under this agreement having occurred and, having occurred, continuing to subsist;
- (g) **representations and warranties:** the representations and warranties of the borrower contained in cl 8(1) being true and correct on the drawdown date; and
- (h) **change of circumstance:** no change of circumstance (as defined in cl 7(6)), having occurred.

(2) *Non-satisfaction of conditions precedent*

If each of the conditions precedent set out in cl 2(1) has not been fulfilled and fully satisfied or waived by the drawdown date, the lender will not be under any obligation to make the advance available to the borrower. In those circumstances the borrower must, on demand by the lender, pay to, or as directed by, the lender, and indemnify the lender against, any and all costs, losses, charges, expenses, liabilities, damages, fees and disbursements paid or incurred by the lender in consequence of the advance not being provided to the borrower. These amounts will include, without limitation, costs, losses, charges, expenses, liabilities, damages, fees and disbursements paid or incurred by the lender in the lender liquidating or otherwise employing deposits by, or

advances from, third parties acquired by the lender to fund or assist in funding the provision of the advance.

Provision of advance

3. Subject to the prior and continuing satisfaction of the conditions precedent set out in cl 2(1), the lender shall, upon request by the borrower, provide the advance to the borrower on the drawdown date on the terms and subject to the conditions set out in this agreement. The advance will be provided to the borrower as the borrower directs in writing no later than three (3) business days prior to the drawdown date.

Payment of interest

4. (1) *Rate of interest*

Interest is payable by the borrower on the loan at the interest rate and will be calculated on the daily balance of the loan on the basis of a 365 day year.

(2) *Default interest*

Where any sum, or any part of any sum, payable by the borrower under this agreement is not paid to, or as directed by, the lender on or before its due date for payment, default interest will accrue on the outstanding amount. Accrued default interest must be paid by the borrower to the lender upon demand by the lender. Default interest will be calculated at the default rate for the period for which the outstanding amount is overdue. Accordingly, default interest will accrue on and from the due date for payment of the outstanding amount up to but excluding its date of payment. It will be computed on a daily basis for actual days elapsed and will be compounded on the last day of each month.

Other payments

5. *Costs and expenses*

Whether or not the borrower satisfies any or all of the conditions precedent set out in cl 2(1), the borrower must, on demand by the lender, pay to, or as directed by, the lender, and indemnify the lender against, all costs, losses, charges, expenses, liabilities, damages, fees and disbursements (including all reasonable legal costs on a solicitor and own client basis) paid or incurred by the lender of or incidental to:

- (a) the negotiation, preparation, execution and (if applicable), stamping and registration of this agreement and of all other deeds, agreements, licences, documents and other instruments to be negotiated, prepared, executed and (if applicable), stamped and registered under or for the purposes of this agreement;
- (b) any breach of, or default under, this agreement by the borrower (including the fees of all professional consultants properly incurred by the lender in consequence of or in connection with, any such breach or default);
- (c) the exercise or attempted exercise of any right, power, privilege, authority or remedy of the lender under or by virtue of this agreement; and
- (d) all taxes (excluding any income tax payable by the lender), outgoings, penalties, fines, demands, charges or costs, stamp and other duties and assessments imposed by any court or by any federal, state or municipal, statutory or other authority or otherwise (including any related bank charges, financial institutions duties and debits taxes)

directly or indirectly upon this agreement or any receipt or payment under this agreement.

Repayment

6. The borrower must repay and finally discharge the loan on the repayment date. The borrower must also pay any interest accrued on the loan and not then paid, and all other amounts payable under this agreement and unpaid, to the lender on or before the repayment date.

Method of payment

7. (1) *Time of payment*

All payments to be made under this agreement by the borrower to, or at the direction of, the lender must, unless otherwise specified or agreed by the lender, be made in Australian dollars in immediately available funds not later than 4:00PM Melbourne time on the due date.

(2) *Place of payment*

All payments to be made under this agreement by the borrower to the lender must be paid to the lender at a place that the lender may from time to time direct in writing. Any payment made in any other way and any payment sent by mail will be at the borrower's risk until it is actually received by the lender.

(3) *No set-off or counterclaim*

Notwithstanding any term, whether express or implied, in this agreement or any rule of law or course of conduct to the contrary, payments under this agreement must be made by the borrower without set-off or counterclaim and, subject to cl 7(4), free and clear of, and without, any deductions whatsoever.

(4) *No withholdings*

All payments to be made under this agreement, whatever their nature, must, to the full extent permitted by law, be made by the borrower without any deduction for, or on account of, any income or other taxes, imposts, deductions or other withholdings of any kind (collectively 'withholdings'). If the borrower is compelled by law to deduct any withholdings from any payment, the borrower must ensure that the deduction made does not exceed the minimum legal liability in that regard. The borrower must also pay to the lender whatever additional amount is necessary (after allowing, for the avoidance of doubt, for withholdings from that amount) to ensure the lender receives the full amount of the payment due under this agreement as if the withholdings had not been deducted.

(5) *Delivery of receipts*

The borrower must deliver, or ensure the delivery, to the lender within five (5) business days after the payment of any deduction or withholding referred to in cl 7(4), the tax receipts and other documentation certifying the actual payment of that deduction or withholding.

(6) *Reserve requirements; change of law*

If after the date of this agreement:

- (a) any form of reserve or special deposit requirement, whether or not it has the force of

- law, is imposed on assets of, or deposits in or for the account of, the lender, or on credit extended from such deposits; or
- (b) any existing form of reserve or special deposit requirement, whether or not it has the force of law, is deemed to apply to assets of, or deposits in or for the account of, the lender, or on credit extended from such deposits; or
 - (c) any form of reserve or special deposit requirement, whether or not having the force of law, imposed on or deemed to apply to assets of, or deposits in or for the account of, the lender, or on credit extended from such deposits, is changed at any time and from time to time; or
 - (d) there is a change in, or extension of, any applicable law or regulation relating to taxation, or the interpretation or application of any applicable law or regulation relating to taxation, which results in the lender being subjected to any tax in respect of this agreement or the loan or any part of the loan or any amount or amounts payable under this agreement (except for taxes on the overall net income of the lender); or
 - (e) any law or regulation or any other condition, whether or not having the force of law, is introduced or, if already existing, is deemed applicable or is changed or there is any change in its interpretation, application or enforcement by any governmental or other authority charged with its administration, application or enforcement, (each a 'change of circumstance') and the result of any of the above matters is to:
 - (f) reduce the amount received or receivable by the lender under this agreement below the amount expected at the date of this agreement to be receivable by the lender; or
 - (g) increase the cost to the lender of providing the advance or maintaining the loan above the cost expected at the date of this agreement.by an amount which the lender considers to be material, the lender will advise the borrower in writing of the amount of the shortfall or of the increased cost. The borrower must then, within seven (7) business days of receiving that written notice, either:
 - (a) pay the lender the amount of the shortfall in the amount received or receivable or the amount of the increased cost of providing the advance or maintaining the loan; or
 - (b) prepay the loan, together with interest accrued on the loan and not then paid and all other amounts payable under this agreement and unpaid, without premium or penalty.The loan will not be available for redrawing, either in whole or in part.

Representations and warranties

8. (1) *Borrower's representations and warranties*

The borrower represents and warrants to the lender that:

- (a) **incorporation:** (if the borrower is a corporation) it is, or is taken to be, registered as a company under the Corporations Law, and has the power to carry on its business and to own its property in the manner and in the locations in which such business is presently being carried on or property owned;
- (b) **corporate power:** (if the borrower is a corporation) it has full power and authority under its memorandum and articles of association to enter into this agreement and to do all things required by this agreement and all necessary meetings have been held and all resolutions have been passed as are required by its memorandum and articles of association and any other action necessary to authorise the execution and

performance of this agreement has been taken and this agreement will each constitute the legal, valid, binding and enforceable obligations of the borrower in accordance with their respective terms;

- (c) **no breach:** except as disclosed in writing to the lender and dispensed with in writing by the lender, neither the execution nor the performance of this agreement will:
- (i) violate in any respect any statute, decree, rule or regulation or any determination, order or award of any court or any governmental, judicial or public body or authority applicable to the borrower; or
 - (ii) cause any limitation (whether imposed by statute, decree, rule or regulation) on any of the powers of the borrower or on the borrower's right or ability to exercise such powers to be exceeded; or
 - (iii) conflict with, or result in any breach of, or require any consent or approval under, any mortgage, agreement or other undertaking or instrument to which the borrower is a party or which is binding upon the borrower or any of the borrower's assets; or
 - (iv) result in a mortgage, charge, lien or other encumbrance over any of the borrower's assets; or
 - (v) cause any limit on the powers of the borrower in respect of borrowing, guaranteeing, raising financial accommodation or otherwise, as the case may be, to be exceeded;
- (d) **no existing default:** except as disclosed in writing to the lender and dispensed with in writing by the lender, the borrower is not in default or difficulty under any deed, agreement or other document or obligation to which it is a party or by which it is bound, or in respect of any financial commitment or obligation (including obligations other than contingent liabilities), which default or difficulty is reasonably likely to adversely affect the ability of the borrower to comply with its obligations under this agreement;
- (e) **compliance with regulations and legislation:** (if the borrower is a corporation) the borrower is in full and ongoing compliance with its Memorandum and Articles of Association and all companies and securities legislation and regulations and (whether or not the borrower is a corporation) the borrower is in full and ongoing compliance with all other legislation and regulations to which the borrower may at any time and from time to time be subject;
- (f) **no default:** no event of default or event which, with the giving of notice or the lapse of time or both, would be an event of default has occurred and, having occurred, is continuing to subsist;
- (g) **no litigation:** except as disclosed in writing to the lender and dispensed with in writing by the lender, no litigation or administrative or other proceedings before, or of, any court or governmental authority or agency or other tribunal have, to the knowledge of the borrower, been initiated or threatened against the borrower or any of the borrower's assets which would or might have a material adverse effect upon the business, assets or financial condition of the borrower;
- (h) **no set-off or counterclaim, etc:** the borrower does not have, and will not during the currency of this agreement have, any right of set-off or counterclaim or any right to

rescind or any other claim with respect to this agreement by way of cross action against the lender;

- (i) **account:** all of the most recent annual or half-yearly or both (as the case requires) accounts of the borrower provided by the borrower to the lender provide a true and fair view of the financial position of the borrower and, except as otherwise disclosed in writing to the lender and dispensed with in writing by the lender, no material adverse change has occurred since the date of those accounts to the financial condition of the borrower; and
- (j) **trustee:** the borrower is not the trustee of any trust and, accordingly, enters into this agreement on its own behalf and not as trustee of any trust.

Borrower's undertakings

9. (1) *Financial definitions*

In this clause the following terms have the following meanings with reference to the latest financial statements of the borrower:

- (a) **'indebtedness'** means any payment, repayment or other financial obligation existing or arising including, without limitation, any payment, repayment or other financial obligation:
 - (i) in respect of moneys borrowed (including interest and other charges in respect of moneys borrowed);
 - (ii) under acceptance credits or like transactions involving the discounting of bills of exchange with banks or other financial institutions; and
 - (iii) under guarantees and indemnities against financial loss issued in respect of any payment, repayment or other financial obligation of another person which would come within this definition; and
- (b) **'encumbrance'** means any mortgage, pledge, lien, hypothecation, or other similar interest or any deferred purchase or title retention on, or with respect to, the properties, assets or revenues of any kind now owned or accruing (as the case requires) or acquired or earned (as the case requires) in the future by the borrower, but does not include the preference of an obligation arising only by operation of law.

(2) *Undertakings and agreements*

For as long as the loan remains outstanding under this agreement to the lender, the borrower undertakes with the lender as follows:

- (a) **compliance with requirements:** to comply with the requirements of all applicable laws, rules, regulations, orders and decrees of any person, non-compliance with which would, or might, in the lender's opinion, have a material adverse effect on the borrower's ability to comply with its obligations under this agreement;
- (b) **event of default:** to notify the lender forthwith of the occurrence of any event of default or event which, with the giving of notice or the lapse of time or both, would become an event of default of which the borrower becomes aware which either would, or might, in the lender's opinion, adversely effect the ability of the borrower fully and promptly to perform its obligations under this agreement;
- (c) **insurance:** to keep its assets and undertaking insured, and to ensure that any major

asset leased by it is insured, against such risks and in such amounts as would prudently be insured against by a person carrying on business similar to the borrower and to deliver to the lender upon request by the lender written details of such insurances and appropriate evidence that all such insurances are in full force and effect and that all relevant premiums have been paid;

- (j) **reduction of capital:** (if the borrower is a corporation) not without the lender's prior written consent to reduce, or permit the reduction of, the issued or paid up share capital of the borrower;
- (k) **change of circumstances:** to notify the lender forthwith of any event or change in the borrower's circumstances, the effect of which either would or might render any representation or warranty made in this agreement untrue or incorrect in any respect; and
- (l) **administrator:** not without the lender's prior written consent appoint an administrator.

Default and termination

10. (1) *Consequences of default*

If any of the events described in cl 10(2) occurs, the loan, together with all interest accrued on the loan and not then paid and all other amounts payable under this agreement and unpaid shall, at the option of the lender and notwithstanding any delay or previous waiver of the right to exercise that option, immediately become due and payable without the necessity for any demand or notice to the borrower.

(2) *Events of default*

Each of the following events is an event of default:

- (a) **payment default:** if the borrower fails to repay the loan on the repayment date or fails to pay any other money payable under this agreement on the due date for payment of that money and such failure continues for more than five (5) business days; or
- (b) **other default:** if the borrower fails to perform or observe any of the covenants or provisions of this agreement on the part of the borrower to be performed or observed (other than a failure of the type contemplated by cl 10(2)(a) and (if capable of remedy) such default continues for more than twenty (20) business days (or such longer period as the lender in its absolute discretion permits) after notice from the lender requiring the borrower to remedy the default, unless the non-performance or non-observance has been waived or excused by the lender in writing; or
- (c) **false or misleading statement:** if the lender ascertains that the borrower has made any false, inaccurate or misleading statement having, in the lender's opinion, a material effect on the provision by the lender of the advance or the maintenance of the loan or in relation to the making of this agreement.
- (d) **winding up:** if an application for the winding up or bankruptcy of the borrower or any related body corporate is presented and the borrower or related body corporate (as the case requires) cannot, within ten (10) business days, reasonably satisfy the lender that the application is frivolous or vexatious or an order is made for the winding up or bankruptcy, or any resolution is passed for the winding up, of the borrower or any related body corporate, except that it will not be an event of default where the winding up of the borrower or the related body corporate is for the purpose of reconstruction or

- amalgamation and has the lender's prior written consent (which consent will not be unreasonably withheld); or
- (e) **receiver, etc:** if a receiver or receiver and manager or provisional liquidator of the assets and undertaking or any part of the assets and undertaking of the borrower or any related body corporate is appointed; or
 - (f) **ceasing to carry on business:** if without the lender's prior written consent the borrower or any related body corporate suspends payment generally or ceases to carry on its business or is unable to pay its debts within the meaning of s 460 of the Corporations Law; or
 - (g) **business practices:** if there occurs, in the lender's opinion, a [material] failure by the borrower or any related body corporate, to implement and to continue to apply commercially sound business practices with respect to the proper operation and management of its, or their respective, activities; or
 - (h) **continued registration:** if any action is initiated by any competent authority with a view to striking the name of the borrower or any related body corporate off the register of companies; or
 - (i) **insolvency schemes:** if without the lender's prior written consent the borrower or any related body corporate enters into any arrangement, reconstruction or composition with its creditors or any of them; or
 - (j) **administrator or inspector:** if the borrower, any related body corporate, or any other person appoints an administrator to the borrower or any related body corporate or takes steps to do so or if an inspector is appointed to investigate the affairs of the borrower or any related body corporate; or
 - (k) **reduction of capital:** if without the lender's prior written consent the borrower or any related body corporate reduces its share capital or attempts to do so; or
 - (l) **change of control:** (if the borrower is a corporation) if without the lender's prior written consent effective control of the borrower is altered to any material extent from that subsisting at the date of this agreement. For the purposes of this cl 10(2)(n) 'effective control' of the borrower means:
 - (i) control of the composition of the board of directors of the borrower;
 - (ii) control of more than half of the voting power of the borrower; or
 - (iii) control of more than half of the issued share capital of the borrower, excluding any part of it which carries no right to participate beyond a specified amount in the distribution of either profit or capital; or
 - (m) **loss of capacity:** if the authority or power of the borrower to perform its obligations under this agreement to which it is a party is revoked or so amended that the borrower is unable to fully and duly perform and observe those obligations or, if the borrower is a natural person, the borrower dies or becomes incapable of managing his or her own affairs; or
 - (n) **illegality:** the continued performance of the obligations of the borrower under this agreement contravenes, or might in the lender's opinion contravene, any applicable statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority; or
 - (o) **material adverse change:** if there is a material adverse change, in the lender's

opinion, in the business or financial condition of the borrower .

(3) *Acceptance of moneys*

The lender may exercise its rights under cl 10(1):

- (a) notwithstanding acceptance of any part of any of the amounts payable under this agreement after the occurrence of any event of default;
- (b) notwithstanding the occurrence of any previous or other event of default; and
- (c) without the necessity for any notice to, or of any consent or concurrence on the part of, the borrower or any other person.

Application of money

11. All money received by the lender under or by virtue of cl 10(1) will be applied in the following order and manner:

- (a) first, in payment of all costs, charges and expenses properly incurred in, or incidental to, the exercise or performance, or attempted exercise or performance, of any of the powers or authorities conferred on the lender by this agreement or otherwise arising in relation to this agreement;
- (b) secondly, in or towards payment of such other properly incurred costs, charges and expenses in relation to the enforcement of this agreement as the lender thinks fit to pay;
- (c) thirdly, in or towards payment to the lender of interest on the loan, including default interest;
- (d) fourthly, in or towards repayment to the lender of the loan; and
- (e) fifthly, in or towards payment to, or at the direction of, the lender of any other amount or amounts payable by the borrower under this agreement.

The surplus, if any, will not carry interest and will be paid to the borrower.

Protection of lender

12. (1) *No requirement for notice*

It is not incumbent on the lender to give any notice of its rights under this agreement, debtor or member of the borrower or to any other person unless the lender thinks fit. The lender is not liable for any omission to give any notice.

(2) *Lender not liable for losses*

The lender is not answerable for any involuntary losses or irregularities which may occur in, or by, the exercise or non-exercise of any of the powers, rights or remedies conferred on the lender by this agreement.

(3) *Discretion on consent*

In any case where, under or pursuant to this agreement, the doing or execution of any act, matter or thing by the borrower is dependent upon the consent or approval of the lender, such consent or approval may be given conditionally or unconditionally or may be withheld by the lender in its absolute uncontrolled discretion, unless this agreement expressly provides otherwise.

(4) *Borrower's risk*

Whenever the borrower is obliged or required under this agreement to do or effect any

act, matter or thing, then the doing of such act, matter or thing will, unless this agreement expressly provides otherwise, be at the sole risk and expense of the borrower.

(5) *Illegality and impossibility*

If after the date of this agreement:

- (a) any order of any court of competent jurisdiction; or
- (b) any change in, or extension of, or application of, any applicable law or regulation, whether or not having the force of law; or
- (c) the official interpretation of any applicable law or regulation by any governmental or other authority, monetary or banking agency or central bank charged with the administration of that law or regulation, makes it unlawful, or impossible (in the lender's opinion) for the lender to give effect to or maintain its obligations under this agreement, the lender will, by notice to the borrower, declare that the lender's obligation to provide the advance or to maintain the loan (as the case requires) is terminated forthwith. If the advance has been provided the borrower must then, within the lesser of five (5) business days of receiving that notice and the period of any maximum grace period allowed by any relevant law or regulation for compliance by the lender with its obligations, prepay the loan, together with all interest accrued on the loan and not then paid and all other amounts payable under this agreement and unpaid, without premium or penalty. The advance will not be available for redrawing either in whole or in part.

Power of attorney

13. The borrower irrevocably appoints:

- (a) the lender and its successors and assigns, and
- (b) every director, secretary and officer of the lender whose title includes the word 'manager', severally the attorney of the borrower with power, at the expense of the borrower, at any time and from time to time,
- (c) after the occurrence of an event of default or an event which, with the giving of notice or the lapse of time or both, would be an event of default; or
- (d) after the borrower has failed to comply with any of the borrower's obligations under this agreement or under any agreement or instrument required under or for the purposes of this agreement or under any agreement or instrument collateral to this agreement or to which this agreement is collateral, upon request by the lender,

to do all acts and things and to execute all documents as may, in the lender's opinion, be reasonably necessary or desirable or expedient to give effect to any right or power conferred on the lender by this agreement.

Judgment currency

14. (1) *Application of clause*

This cl 14 will apply if:

- (a) as a result of a judgment in any court in any country; or
- (b) to enable the lender to obtain any judgment in relation to this agreement or any matter

arising under this agreement,

it becomes necessary to convert any principal, interest or other amount due under this agreement from the currency in which it is denominated or due into some other currency (a 'currency conversion').

(2) *Rate for currency conversion*

Each currency conversion will be effected at the spot rate of exchange (as determined by the lender in accordance with its normal practice) (the 'rate of exchange') prevailing on either the relevant date of default or the business day immediately preceding the date of issue of the relevant judgment, whichever is, in the lender's opinion, the more appropriate given the economic benefits and burdens which this agreement is intended to record (the 'conversion date').

(3) *Change in rate of exchange*

If any change in the rate of exchange occurs between the conversion date and the date on which payment of the amount or amounts due is actually made to the lender, the borrower must pay to the lender whatever additional amount is necessary to ensure the lender receives the full amount of the payment due under this agreement when converted at the rate of exchange prevailing on the date the amount is received in the currency in which it is (apart from the judgment) due.

(4) *Separate debt*

Any amount due by the borrower to the lender as a consequence of the application of this cl 14 will be due as a separate debt. It will not be affected in any way by any judgment being obtained for any other sum due under this agreement.

General

15. (1) *Non-merger*

None of the terms or conditions of this agreement, nor any act, matter or thing done under or by virtue of, or in connection with, this agreement will operate as a merger of any of the rights and remedies of the lender in or under this agreement or otherwise. All such rights and remedies of the lender will continue in full force and effect.

(2) *Statutes not to abrogate agreement*

Unless application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the lender under this agreement.

(3) *Reimbursement of lender*

To the extent permissible at law, the borrower must, forthwith upon demand, pay to the lender an amount equivalent to any moneys paid by the lender in respect of any liability imposed on the borrower under or by virtue of this agreement, notwithstanding that any statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, directly or indirectly, imposes such liability upon the lender.

(4) *Assignments*

(a) This agreement is binding on, and operates for the benefit of, both the borrower and

the lender and their respective successors and assigns, except that the borrower must not assign this agreement or any of its rights or obligations under this agreement without the lender's prior written consent. The lender may at any time assign, charge or otherwise deal with its rights under this agreement.

Without limiting the generality of this cl 15(4)(a), the lender may also participate its rights under the whole or any part of this agreement or this agreement. The lender may transfer the whole or any part of its obligations similarly. The lender may, for the purposes of any participation or assignment, disclose to a potential participant or assignee all information in its possession about the borrower. Where the lender assigns or participates its rights or its obligations or both as contemplated by this cl 15(4)(a), the borrower must do all acts and things and execute all documents as may, in the lender's opinion, be reasonably necessary or desirable or expedient to effect the assignment or participation. The benefit of all provisions of this agreement will enure mutatis mutandis for the benefit of the assignee or participant.

- (b) The lender is entitled at any time and from time to time to perform its obligations under this agreement through any branch or office, provided that branch or office is not a separate legal entity, situated at a location within Australia other than the address specified in this agreement. In that case, the benefit of this agreement and will operate in favour of the lender at the relevant branch or office.

(5) *Statement by lender*

A statement in writing signed by a director, secretary, or officer of the lender whose title includes the word 'manager' stating the amount due or owing by the borrower to the lender or any other act, matter or thing arising under this agreement as at any date or dates set out in that statement will be prima facie evidence of the facts so stated.

(6) *Severability and survival of covenants*

If any provision of this agreement is, or at any time becomes, prohibited by, or unlawful under, any applicable law, regulation or other condition actually applied or otherwise becomes void or unenforceable, it will be severed from this agreement and rendered ineffective so far as is possible without modifying the remaining provisions of this agreement. The remaining provisions will, to the extent permitted by the relevant law, regulation or other condition, continue in full force and effect. Where, however, the provisions of any such applicable law, regulation or other condition may be waived, they are waived by the borrower and the lender to, but not beyond, the full extent permitted by the law, regulation or other condition to enable this agreement to constitute a valid and binding obligation enforceable in accordance with its terms.

Any prohibited, unlawful, void or unenforceable provision will be replaced forthwith by an allowable, lawful, effective and enforceable provision which so far as possible achieves the same economic benefit or burden for the lender and the borrower as the prohibited, unlawful, void or unenforceable provision was intended to achieve. All obligations of the borrower under this agreement will survive the expiration or termination of this agreement to the extent required for their full observance and performance.

(7) *Prohibition on oral amendments*

Neither this agreement nor any provision of this agreement may be amended, modified, waived, discharged or terminated orally.

(8) *No waiver*

Time is of the essence of this agreement. However, no failure or delay by the lender to exercise any power, right or remedy under this agreement will operate as a waiver of that power, right or remedy. Nor will any single or partial exercise of any power, right or remedy under this agreement preclude any other or further exercise of that power, right or remedy. The lender will only be taken to have waived any power, right or remedy under this agreement, including (without limitation) its rights in respect of any event of default, to the extent that the power, right or remedy has been expressly waived in writing by a director, secretary or other officer of the lender whose title includes the word 'manager', irrespective of any previous waiver of any other breach of the same or any other covenant or provision of this agreement or any other agreement. The powers, rights and remedies provided under this agreement to the lender are not exclusive of any powers, rights and remedies provided at law or in equity.

(9) *Defective execution*

If there is any defect in the execution of this agreement by the borrower or the lender, that party may re-execute or ratify its purported execution. That re-execution or ratification will relate back to the original purported execution by that party.

(10) *Counterparts*

This agreement may be executed in any number of counterparts all of which, when taken together, will constitute one and the same instrument.

(11) *Execution by attorney*

If this agreement is executed on behalf of the borrower or the lender by a person authorised to execute it under power of attorney, that person, by his or her execution of this agreement, states that at the time of such execution he or she had no notice of the revocation of that power of attorney.

(12) *Notices*

Any notice or demand to be given under, or in relation to, this agreement will be deemed to be duly given or made if it is in writing and, in the case of the borrower, left at, or sent by prepaid post to, the borrower at his or her place of abode or business known to the officer sending such notice or demand or at the registered office of the borrower being a company and, in the case of the lender, if it is in writing and left at, or sent by prepaid post to, the lender at its address set out in this agreement. Any notice or demand sent by post will be deemed to have been received by the party to whom it is addressed on the day which in the normal course of post it would have been delivered.

(13) *Governing law and submission to jurisdiction*

This agreement will be construed in accordance with the law of the state or territory in which it is executed by the lender and the law of such state or territory will be the proper law of the contract. The parties agree to submit to the non-exclusive jurisdiction of the courts of that state or territory and any courts which may hear appeals therefrom.

EXECUTED AS AN AGREEMENT

Signed sealed and delivered by
jw (lender), in the presence of:

Signature of witness

Signature of jw

Name of witness (please print)

Executed by
hw (borrower)

Signature of hw

LEGALE DOCS
SAMPLE