

**EXECUTION VERSION**

*TERM BILATERAL FACILITY AGREEMENT*

*June 2017 revision*



**APLMA**

Asia Pacific Loan Market Association

(Australian Branch)

\$20,000,000

FACILITY AGREEMENT

dated 18 August 2025

for

Liberty Bell Bay Pty Ltd (ABN 23 004 456 035)

King & Wood Mallesons  
Level 27  
Collins Arch  
447 Collins Street  
Melbourne VIC 3000  
Australia  
T +61 3 9643 4000  
www.kwm.com

Released under RTI

## CONTENTS

Clause	Page
1. Definitions and Interpretation .....	1
2. The Facility .....	10
3. Purpose.....	10
4. Conditions of Utilisation.....	10
5. Utilisation.....	11
6. [NOT USED] .....	11
7. Repayment .....	12
8. Prepayment and Cancellation .....	12
9. Interest .....	14
10. [NOT USED] .....	14
11. [NOT USED] .....	14
12. Fees .....	14
13. Tax Gross Up and Indemnities.....	15
14. [NOT USED] .....	18
15. Other Indemnities.....	18
16. [NOT USED] .....	19
17. Costs and Expenses.....	19
18. [NOT USED] .....	21
19. Representations .....	22
20. Information Undertakings.....	25
21. [NOT USED] .....	26
22. General Undertakings .....	26
23. Events of Default .....	27
24. Changes to the Lender .....	31
25. Assignment and Novation by the Borrower.....	34
26. [NOT USED] .....	35
27. Conduct of Business by the lender.....	35
28. Payment Mechanics .....	36
29. Set-Off .....	38
30. Notices .....	38
31. Calculations and Certificates .....	41
32. Partial Invalidity.....	41

33. Remedies and Waivers.....	41
34. [NOT USED] .....	41
35. PPSA Provisions .....	41
36. [NOT USED] .....	42
37. Counterparts.....	42
38. Indemnities and Reimbursement.....	42
39. Acknowledgement .....	43
40. Governing Law .....	44
41. Enforcement.....	44
42. Disclosure .....	45
43. Determination .....	45
44. Exercise of powers by Lender.....	45
45. No interference with executive duties or powers.....	45
Schedule 1 THE ORIGINAL PARTIES .....	46
Part I The Borrower .....	46
Part II [NOT USED] .....	47
Part III The Original Lender .....	48
Schedule 2 CONDITIONS PRECEDENT .....	49
Part I Conditions Precedent To Initial Utilisation.....	49
Part II [NOT USED] .....	51
Part III Form of Verification Certificate.....	52
Schedule 3 REQUESTS .....	54
Part I Utilisation Request Loans .....	54
Part II [NOT USED] .....	56
Schedule 4 FORM OF TRANSFER CERTIFICATE.....	57
Schedule 5 [NOT USED].....	61
Schedule 6 [NOT USED].....	62
Schedule 7 [NOT USED].....	63
Schedule 8 [NOT USED].....	64
Schedule 9 TIMETABLES .....	65
Part I Loans .....	65
Schedule 10 [NOT USED].....	66
Schedule 11 ADDITIONAL UNDERTAKINGS .....	67
Schedule 12 ADDITIONAL EVENTS OF DEFAULT .....	73

**THIS AGREEMENT** is dated \_\_\_\_\_ 2025 and made between:

- (1) Liberty Bell Bay Pty Ltd (ABN 23 004 456 035) (the "**Borrower**"); and
- (2) The State of Tasmania (acting through the Minister administering the *Tasmanian Development Act 1983* (Tas) and represented by the Department of State Growth (the "**Original Lender**").

**IT IS AGREED** as follows:

## SECTION 1 INTERPRETATION

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Authorisation**" means:

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

"**Authorised Officer**" means:

- (a) in respect of the Borrower, any director or company secretary, or any person from time to time nominated as an Authorised Officer by it by a notice to the Lender accompanied by certified copies of signatures of all new persons so appointed; and
- (b) in respect of the Lender, each Secretary, Acting Secretary and Deputy Secretary of the Department, and a nominee of any of them.

"**Availability Period**" means, in relation to the Facility, the period from and including the date of Financial Close to and including the date which is 30 Business Days thereafter.

"**Available Commitment**" means the Lender's Commitment under the Facility minus:

- (a) the amount of any outstanding Loans; and
- (b) in relation to any proposed Utilisation, the amount of any Loans that are due to be made on or before the proposed Utilisation Date.

"**Blended Ore**" has the meaning given to that term in Clause 3.1(b) (*Purpose*).

"**Boral**" means Boral Limited ABN 13 008 421 761 or any of its Affiliates.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in Hobart.

"**Cash Advance Limit**" means \$20,000,000 (or such other amount as the Lender may agree in its sole and absolute discretion).

"**Code**" means the US Internal Revenue Code of 1986.

"**Commitment**" means:

- (a) in relation to the Original Lender, the lesser of:
  - (i) the Cash Advance Limit; and
  - (ii) the sum of:
    - (A) the amount specified in a provisional invoice issued by South32 in respect of a shipment of Primary Ore;
    - (B) the amount required for a deposit for a shipment of Blended Ore from South32 and/or any other agreed ore suppliers;
    - (C) the Upfront Fee;
    - (D) any transaction cost and expenses to be capitalised in accordance with this Agreement; and
    - (E) any currency conversion costs and expenses to be capitalised in accordance with this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Control**" means, in respect of a company:

- (a) 'control' as defined in section 50AA of the Corporations Act;
- (b) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to cast, or control the casting of, more than 50% of the maximum number of votes attached to voting securities in the company; or
- (c) the holding beneficially (directly or indirectly) of more than 50% of the issued voting securities of the company.

"**Default**" means an Event of Default or a Potential Event of Default

"**Department**" means the department representing the Crown that is responsible for the administration of this Agreement, or any department that substantially succeeds to its functions.

**"Event of Default"** means any event or circumstance specified as such in Clause 23 (*Events of Default*).

**"Facility"** means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

**"Facility Refund"** means any payment by South32 or any other supplier to the Borrower by way of:

- (a) refund of the amount by which the total amount specified in the final invoice for the Primary Ore exceeds the amount specified in the provisional invoice for the Primary Ore; or
- (b) return of the deposit paid in respect of the Blended Ore.

**"FATCA"** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**"FATCA Deduction"** means a deduction or withholding from a payment under a Finance Document required by FATCA.

**"FATCA Exempt Party"** means a Party that is entitled to receive payments free from any FATCA Deduction.

**"Finance Document"** means:

- (a) this Agreement;
- (b) each Security Document; and
- (c) any other document designated as such by the Lender.

**"Financial Close"** has the meaning given to that term in Clause 4.1 (*Initial conditions precedent*).

**"Financial Indebtedness"** means any indebtedness for or in respect of:

- (a) moneys borrowed and any debit balance at any financial institution;
- (b) any amount raised under any acceptance credit, bill acceptance or bill endorsement facility or dematerialised equivalent;

- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any redeemable shares where the holder has the right, or the right in certain conditions, to require redemption;
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (h) consideration for the acquisition of assets or services payable more than 90 days after acquisition;
- (i) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (j) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

"GAAP" means generally accepted accounting principles, standards and practices in Australia.

"**General Security Deed**" means the general security deed dated on or about the date of this Agreement between the Borrower and the Original Lender.

"**Government Body**" includes a body politic, a government (federal, state or local), a governmental, judicial or administrative body, a tribunal, a commission, a department or agency of any government, and a statutory authority or instrumentality.

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

"GST" means a goods and services tax, or a similar value added tax, levied or imposed under the GST Act.

"**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary.

**"Indirect Tax"** means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

**"Interest Period"** means subject to Clause 9.4 (*Non-Business Days*), in relation to a Loan, the period commencing on the Utilisation Date for that Loan and ending on the Termination Date for the Facility and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.3 (*Default interest*).

**"Lender"** means:

- (a) the Original Lender; and
- (b) any person which has become a Party in accordance with Clause 24 (*Changes to the Lender*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

**"Loan"** means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan .

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

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

**"Month"** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

"**Minister**" means the Minister administering the *Tasmanian Development Act 1983* (Tas).

"**Mortgage**" means, once entered into, the mortgage dated on or about the date of this Agreement and granted by the Borrower in favour of the Lender over the land comprised in Folios of the Register:

- (c) Volume 177661 Folio 1;
- (d) Volume 6255 Folio 1; and
- (e) Volume 235328 Folio 1.

"**New Lender**" has the meaning given to that term in Clause 24 (*Changes to the Lender*).

"**Party**" means a party to this Agreement.

"**Permitted Security Interest**" has the meaning given to that term in Clause 22.3 (*Negative Pledge*).

"**Potential Event of Default**" means any event or circumstance specified in Clause 23 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"**Primary Ore**" has the meaning given to that term in Clause 3.1(a) (*Purpose*).

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

"**Relevant Market**" means in relation to Australian dollars, the Australian interbank market for bank accepted bills and negotiable certificates of deposits.

"**Repeating Representations**" means each of the representations set out in Clause 19.

"**Right**" includes any power, right, authority, remedy or discretion.

"**Sales Contract**" means a contract for the sale of any product derived from the Primary Ore or the Blended Ore.

"**Sales Proceeds**" means any cash proceeds under or in connection with any Sales Contract.

"**Sales Strategy**" has the meaning given in Schedule 11 Clause 8(a).

"**Secured Property**" means any asset which is subject to the Security.

"**Security**" mean the Security Interest created or expressed to be created in favour of, or held for the benefit of, the Lender pursuant to the Security Documents.

"**Security Document**" means:

- (a) the General Security Deed;

- (b) the Specific Security Deed;
- (c) the Mortgage; and
- (d) any document entered into by the Borrower and which creates a Security Interest over any of its assets in favour of, or for the benefit of, the Lender in respect of all or any part of the obligations of the Borrower under the Finance Documents.

"**Security Interest**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect, including any "security interest" as defined in sections 12(1) or (2) of the PPSA.

"**South32**" means South32 Limited (ABN 84 093 732 597) or any of its Affiliates.

"**Specific Security Deed**" means the specific security deed dated on or about the date of this Agreement between the Borrower and the Original Lender.

"**Specified Time**" means a time determined in accordance with Schedule 9 (*Timetables*).

"**Subsidiary**" has the meaning given in the Corporations Act 2001, but as if body corporate includes any entity. It also includes an entity required by current accounting practice to be included in the consolidated annual financial statements of that entity or would be required if that entity were a corporation.

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

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

"**Termination Date**" means the date which is 5 months after the date of this Agreement (or such later date as the Lender may agree in its sole and absolute discretion).

"**Transfer Certificate**" means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Lender and the Borrower.

"**Transfer Date**" means, in relation to an assignment or a transfer, the Transfer Date specified in the relevant assignment agreement or Transfer Certificate.

"**Traxys**" means Traxys Europe S.A.

"**Unpaid Sum**" means any sum due and payable but unpaid by the Borrower under the Finance Documents.

"**Upfront Fee**" means the fee described in Clause 12.1 (*Upfront Fee*).

"**US**" means the United States of America.

"**Utilisation**" means a utilisation of a Facility.

"**Utilisation Date**" means the date of a Utilisation, being the date on which the relevant Loan is to be made.

"**Utilisation Request**" means a notice substantially in the form set out in Part I of Schedule 3 (*Requests*).

"**White Oak**" means White Oak Global Advisors, LLC.

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
- (i) the "**Lender**" or any "**Party**" shall be construed so as to include its executors, administrators, successors, substitutes (including by novation) and assigns to, or of, its rights and/or obligations under the Finance Documents;
  - (ii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iii) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (iv) "**guarantee**" means (A) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or (B) any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (v) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) a "**person**" or "**entity**" includes any individual, firm, company, corporation, government, a Government Body, a state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality) or two or more of them and any reference to a particular person or entity (as so defined) includes a reference to that person's or entity's executors, administrators, successors, substitutes (including by novation) and assigns;
  - (vii) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation and if not having the force of law, with which responsible entities in the position of the relevant Party would normally comply;

- (viii) a provision of law or a regulation is a reference to that provision as amended or re-enacted;
- (ix) a time of day is a reference to Hobart time; and
- (x) the words "**including**", "**for example**" or "**such as**" when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- (b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Section, Clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied to the satisfaction of the Lender or waived and an Event of Default is "**continuing**" if it has not been remedied to the satisfaction of the Lender or waived.
- (f) A reference to a Minister includes, as applicable, that Minister's predecessors and successors in office.
- (g) A reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or functions of which have been substantially transferred, is taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred.
- (h) A reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office.

### 1.3 **Currency symbols and definitions**

"**US\$**", "**USD**" and "**US dollars**" denote the lawful currency of the United States of America, and "**\$**", "**A\$**", "**AUD**", "**dollars**" and "**Australian dollars**" denote the lawful currency of Australia.

## SECTION 2 THE FACILITY

### 2. THE FACILITY

Subject to the terms of this Agreement, the Lender makes available to the Borrower an Australian dollar term loan facility in an aggregate amount equal to the Commitment.

### 3. PURPOSE

#### 3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility towards:

- (a) funding a shipment of primary ore from Australia from South32 ("**Primary Ore**"); and
- (b) funding the deposit for a shipment of blended ore from South Africa from South32 and/or any other ore suppliers agreed by the Lender ("**Blended Ore**").

#### 3.2 Monitoring

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

### 4. CONDITIONS OF UTILISATION

#### 4.1 Initial conditions precedent

No Borrower may deliver a Utilisation Request unless the Lender has received (or waived receipt of) all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied ("**Financial Close**").

#### 4.2 Further conditions precedent

The Lender will only be obliged to comply with Clause 5.4 (*Loan availability*) if, on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan; and
- (b) the Repeating Representations to be made by the Borrower are true and not misleading.

#### 4.3 [Not used]

#### 4.4 Maximum number of Loans

- (a) The Borrower may only deliver two Utilisation Requests, one for the purpose under Clause 3.1(a) and one for the purpose under Clause 3.1(b).
- (b) If the final invoice for the Primary Ore exceeds the provisional invoice for the Primary Ore the Borrower may request a further Loan from the Lender in respect of the amount of the difference in a further Utilisation Request. The Lender may agree to provide such further Loan in its discretion and to extend the Availability Period for the purposes of such further Loan but subject to the Available Commitment not being exceeded.
- (c) The Borrower may not request that a Loan be divided.

## SECTION 3 UTILISATION

### 5. UTILISATION

#### 5.1 Delivery of a Utilisation Request

A Borrower may utilise a Facility by delivery to the Lender of a duly completed Utilisation Request not later than the Specified Time.

#### 5.2 Completion of a Utilisation Request

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
  - (i) the proposed Utilisation Date is a Business Day within the Availability Period applicable to the Facility; and
  - (ii) the amount of the Utilisation complies with Clause 5.3 (*Amount*).
- (b) Only one Loan may be requested in each Utilisation Request.

#### 5.3 Amount

The amount of the proposed Loan must be an amount which is not more than:

- (a) in respect of a Loan to be applied for the purpose described in Clause 3.1(a) (*Purpose*), the amount specified in the provisional invoice issued by South32 in respect of a shipment of Primary Ore or, if less, the Available Commitment; and
- (b) in respect of a Loan to be applied for the purpose described in Clause 3.1(b) (*Purpose*), the amount required for a deposit for a shipment of Blended Ore from South32 and/or any other agreed ore suppliers or, if less, the Available Commitment,

in each case, taking into account the conversion into US dollars in accordance with this Agreement.

Note: a Utilisation Request may specify a USD amount. Once AUD is converted to USD in accordance with this Agreement, the amount of the Loan will be the relevant AUD amount.

#### 5.4 Loan availability

If the conditions set out in this Agreement have been met the Lender shall make each Loan available by the Utilisation Date.

#### 5.5 Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

### 6. [NOT USED]

**SECTION 4**  
**REPAYMENT, PREPAYMENT AND CANCELLATION**

**7. REPAYMENT**

**7.1 Repayment of Loans**

- (a) The Borrower shall repay each Loan on the Termination Date.
- (b) The Borrower may not reborrow any part of the Facility which is repaid.

7.2 [Not used]

7.3 [Not used]

7.4 [Not used]

**8. PREPAYMENT AND CANCELLATION**

**8.1 Illegality**

If, in any applicable jurisdiction, it becomes unlawful (or impossible as a result of a change in law or regulation) for the Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain any Loan or it becomes unlawful or impossible as a result of a change in law or regulation for any Affiliate of the Lender to do so:

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) upon the Lender notifying the Borrower, the Available Commitment of the Lender will be immediately cancelled; and
- (c) each Borrower shall repay each Loan made to that Borrower on the last day of the Interest Period for the Loan occurring after the Lender has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law) and the Lender's corresponding Commitment(s) shall be cancelled in the amount repaid.

8.2 [Not used]

**8.3 Voluntary cancellation**

The Borrower may, if it gives the Lender not less than 5 Business Days' (or such shorter period as the Lender may agree) prior notice, cancel the whole or any part of an Available Commitment. Any cancellation under this Clause 8.3 shall reduce the Commitment of the Lender under the Facility.

**8.4 Voluntary prepayment of Loans**

The Borrower to which a Loan has been made may, if it gives the Lender not less than 5 Business Days' (or such shorter period as the Lender may agree) prior notice, prepay the whole or any part of any Loan.

8.5 [Not used]

**8.6 Restrictions**

- (a) Any notice of cancellation, prepayment, authorisation or other election given by any Party under this Clause 8 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant

cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and without premium or penalty.
- (c) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.
- (d) No amount of the Commitment cancelled under this Agreement may be subsequently reinstated.
- (e) If all or part of a Loan under the Facility is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of the Lender's Commitment in respect of the Facility will be deemed to be cancelled on the date of repayment or prepayment.

Released under RTI

**SECTION 5**  
**COSTS OF UTILISATION**

**9. INTEREST**

**9.1 Calculation of interest**

The rate of interest on each Loan for each Interest Period is 12% per annum.

**9.2 Payment of interest**

The Borrower to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period.

**9.3 Default interest**

If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is 20 per cent per annum. Any interest accruing under this Clause 9.3 shall be immediately payable by the Borrower on demand by the Lender.

**9.4 Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

**9.5 [Not used]**

**10. [NOT USED]**

**11. [NOT USED]**

**12. FEES**

**12.1 Upfront Fee**

(a) The Borrower shall pay to the Lender an upfront fee in an amount equal to A\$400,000 ("**Upfront Fee**") on or prior to the date of Financial Close.

(b) Subject to paragraph (c) below, unless otherwise paid by the Borrower, the Upfront Fee shall be capitalised on the date of Financial Close by way of an automatic Utilisation of the Facility.

(c) Capitalisation of the Upfront Fee under paragraph (b) is subject to:

- (i) no Event of Default continuing or resulting from the Upfront Fee being capitalised; and
- (ii) the Available Commitment not being exceeded from the Upfront Fee being capitalised,

and the requirements of Clause 4 (*Conditions of Utilisation*) and Clause 5 (*Utilisation*) do not otherwise apply.

(d) If paragraph (c) is not complied with, the Upfront Fee will not automatically capitalise and must be paid by the Borrower on the date of Financial Close.

**SECTION 6**  
**ADDITIONAL PAYMENT OBLIGATIONS**

**13. TAX GROSS UP AND INDEMNITIES**

**13.1 Definitions**

- (a) In this Clause 13:

**"Tax Credit"** means a credit against, relief or remission for, or repayment of any Tax.

**"Tax Payment"** means either the increase in a payment made by the Borrower to the Lender under Clause 13.2 (*Tax gross-up*) or a payment under Clause 13.3 (*Tax indemnity*).

**13.2 Tax Gross-up**

- (a) The Borrower shall make all payments to be made by it under the Finance Documents without any Tax Deduction unless such Tax Deduction is required by law.
- (b) Each Party shall promptly upon becoming aware that the Borrower must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the other Parties accordingly.
- (c) If a Tax Deduction is required by law to be made by the Borrower except in relation to a Tax described in Clause 13.3(b)(i) or 13.3(b)(ii) (*Tax indemnity*), the Borrower shall pay an additional amount together with the payment so that, after making any Tax Deduction, the Lender receives an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the Lender evidence satisfactory to the Lender, acting reasonably, that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

**13.3 Tax indemnity**

- (a) The Borrower shall (within three Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance Document or a transaction or payment under it.
- (b) Paragraph (a) shall not apply:
- (i) with respect to any Tax assessed on the Lender if that Tax is imposed on or calculated by reference to the net income received or receivable (but not

any sum deemed to be received or receivable) by the Lender under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or

(ii) to the extent the relevant loss, liability or cost:

(A) is compensated for by an increased payment under Clause 13.2 (*Tax Gross-up*); or

(B) relates to a FATCA Deduction required to be made by a Party.

(c) The Lender, if making or intending to make a claim pursuant to paragraph (a) above, shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

#### 13.4 Tax Credit

If the Borrower makes a Tax Payment and the Lender determines in its absolute discretion that:

(a) a Tax Credit is attributable to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(b) the Lender has obtained, utilised and retained that Tax Credit,

subject to Clause 27 (*Conduct of business by the Lender*), the Lender shall pay an amount to the Borrower which the Lender determines in its absolute discretion will leave it (after that payment) in the same after-Tax position as it would have been in had the circumstances not arisen which caused the Tax Payment to be required to be made by the Borrower.

#### 13.5 Stamp duties and Taxes

The Borrower shall:

(a) pay; and

(b) within three Business Days of demand, indemnify the Lender against any cost, expense, loss or liability the Lender incurs in relation to,

all stamp duty, registration or other similar Tax payable in respect of any Finance Document except Transfer Certificates.

#### 13.6 Indirect Tax

(a) All payments to be made by the Borrower under or in connection with any Finance Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply or chargeable with Indirect Tax then, when the Borrower makes the payment:

(i) it must pay to the Lender an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and

(ii) the Lender will promptly provide to the Borrower a tax invoice complying with the relevant law relating to that Indirect Tax.

- (b) Where a Finance Document requires the Borrower to reimburse or indemnify the Lender for any costs or expenses, the Borrower shall also at the same time pay and indemnify the Lender against all Indirect Tax incurred by the Lender in respect of the costs or expenses save to the extent that the Lender is entitled to repayment or credit in respect of the Indirect Tax. The Lender will promptly provide to the Borrower a tax invoice complying with the relevant law relating to that Indirect Tax.

### 13.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
- (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party;
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige the Lender to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

### 13.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment.

### 14. [NOT USED]

### 15. OTHER INDEMNITIES

#### 15.1 Currency indemnity

- (a) If any sum due from the Borrower under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
  - (i) making or filing a claim or proof against the Borrower;
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, expense, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

#### 15.2 Other indemnities

The Borrower shall, within three Business Days of demand, indemnify the Lender against any cost, expense, loss or liability (including legal fees) incurred by the Lender as a result of:

- (a) the occurrence of any Default;
- (b) any information produced or approved by the Borrower under or in connection with the Finance Documents or the transactions they contemplate being or being alleged to be misleading or deceptive in any respect;
- (c) any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Borrower or with respect to the transactions contemplated or financed under this Agreement;

- (d) a failure by the Borrower to pay any amount due under a Finance Document on its due date;
- (e) funding, or making arrangements to fund, a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone);
- (f) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower;
- (g) investigating any event which it reasonably believes is a Default;
- (h) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (i) instructing lawyers, accountants, tax advisers, surveyors or other experts or professional advisers as permitted under this Agreement.

16. **[NOT USED]**

17. **COSTS AND EXPENSES**

17.1 **Transaction expenses**

- (a) The Borrower shall, within three Business Days of demand pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender in connection with the negotiation, preparation, printing, execution and registration of:
  - (i) this Agreement, the Security Documents and any other documents referred to in this Agreement or the Security Documents; and
  - (ii) any other Finance Documents executed after the date of this Agreement.
- (b) Subject to paragraph (c) below, unless otherwise paid by the Borrower, the costs and expenses referred to in paragraph (a) shall be capitalised on the relevant due date by way of an automatic Utilisation of the Facility.
- (c) Capitalisation of the costs and expenses under paragraph (b) is subject to:
  - (i) no Event of Default continuing or resulting from such costs and expenses being capitalised; and
  - (ii) the Available Commitment not being exceeded from such costs and expenses being capitalised,and the requirements of Clause 4 (*Conditions of Utilisation*) and Clause 5 (*Utilisation*) do not otherwise apply.
- (d) If paragraph (c) is not complied with, the costs and expenses referred to in paragraph (a) will not automatically capitalise and must be paid by the Borrower within three Business Days of demand by the Lender.

**17.2 Amendment and other costs**

If the Borrower requests an amendment, waiver or consent, the Borrower shall, within three Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.

**17.3 Enforcement costs**

The Borrower shall, within three Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

Released under RTI

**SECTION 7  
[NOT USED]**

18. [NOT USED]

Released under RTI

**SECTION 8**  
**REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

**19. REPRESENTATIONS**

The Borrower makes the representations and warranties set out in this Clause 19 to the Lender on the date of this Agreement.

**19.1 Status**

- (a) It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

**19.2 Binding obligations**

- (a) The obligations expressed to be assumed by it in each Finance Document to which it is a party are, subject to any necessary stamping and Authorisations, equitable principles and laws generally affecting creditors' rights, legal, valid, binding and enforceable obligations.
- (b) Without limiting the generality of paragraph (a) above, each Security Document to which it is a party creates the Security which that Security Document purports to create and that Security is valid and effective.

**19.3 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents including the granting of the Security do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets in any material respect or constitute a default or termination event under any such agreement or instrument.

**19.4 Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

**19.5 Validity and admissibility in evidence**

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;
- (b) to make the Finance Documents to which it is a party, its legal, valid, binding and enforceable obligations, admissible in evidence in its jurisdiction of incorporation;
- (c) to perfect the Security; and

- (d) for it to carry on its business, where failure to obtain that Authorisation may have a Material Adverse Effect,

have been obtained or effected and are in full force and effect other than

- (i) the registration of any security interest against any party other than the Borrower created under a Finance Document on the register held under the PPSA; or
- (ii) any Authorisation which will be carried out in satisfaction of the conditions precedent in Part I of Schedule 2 (*Conditions Precedent*) or by the Lender.

#### 19.6 **Governing law and enforcement**

- (a) The choice of law referred to in Clause 40 (*Governing Law*) as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.
- (b) Any judgment obtained against it in any jurisdiction referred to in Clause 41 (*Enforcement*) in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

#### 19.7 **No stamp Taxes**

Under the law of its jurisdiction of incorporation it is not necessary that any stamp, registration or similar Tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents, save for any payment referred to in any legal opinion delivered to the Lender under this Agreement or disclosed by or behalf of the Borrower to the Lender.

#### 19.8 **Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in Clause 23.7 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 23.8 (*Creditors' process*),

has been taken in relation to the Borrower, and none of the circumstances described in Clause 23.6 (*Insolvency*) applies to the Borrower.

#### 19.9 **No default**

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Finance Document.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or its assets are subject which might have a Material Adverse Effect.

#### 19.10 No misleading information

- (a) Any factual information provided by or on behalf of the Borrower was true and accurate and not misleading as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Any financial projections provided by or on behalf of the Borrower to the Lender have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from the information provided in writing in connection with the Finance Documents and no information has been given or withheld that results in the information provided by or on behalf of the Borrower to the Lender being untrue or misleading.

#### 19.11 [Not used]

#### 19.12 Pari passu ranking

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

#### 19.13 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it.

#### 19.14 Trustee

It does not enter into any Finance Document or hold any property as trustee.

#### 19.15 Authorised signatories

Any person specified as its Authorised Officer under Schedule 2 (*Conditions precedent*) or Clause 20.4 (*Information: miscellaneous*) is authorised to sign Utilisation Requests and other notices on its behalf except where it has previously notified the Lender that the authority has been revoked.

#### 19.16 Taxes

It has filed all Tax returns and reports required to be filed, and has paid all Taxes which are due and payable.

#### 19.17 Ranking

Each Security which is expressed to grant under the Security Documents has or will have the ranking and priority which it is expressed to have in the Security Documents (if any) and it is not subject to any prior ranking or *pari passu* ranking Security Interest other than any Permitted Security Interest.

#### 19.18 Ownership of assets

It is the sole legal and beneficial owner of the Secured Property subject to the Security granted by it, free and clear of all Security Interests other than the Permitted Security Interests.

#### 19.19 **White Oak**

Neither it nor any of its Affiliates have entered into any agreement or arrangement with White Oak, its Affiliates or any other person containing a negative pledge or any term which may restrict, impair or adversely impact the ability of the Borrower to create, grant or permit to subsist any Security Interest over its assets or undertakings in favour of any person or to enter into and perform its obligations under the Finance Documents.

#### 19.20 **Repetition**

- (a) The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on each day after the date of this Agreement.
- (b) The Borrower must notify the Lender of any event or circumstance arising of which it is aware that would mean it could not repeat all those Repeating Representations by reference to the facts and circumstances subsisting on the relevant date.

### 20. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

#### 20.1 **[Not used]**

#### 20.2 **[Not used]**

#### 20.3 **[Not used]**

#### 20.4 **Information: miscellaneous**

The Borrower shall supply to the Lender:

- (a) all documents dispatched by the Borrower to its shareholders (or any class of them) or its creditors generally (or any class of them) at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower, and which might, if adversely determined, have a Material Adverse Effect;
- (c) promptly, such further information regarding the financial condition, business and operations of the Borrower as the Lender may reasonably request;
- (d) promptly, notice of any change in Authorised Officer of the Borrower signed by a director or secretary of the Borrower accompanied by specimen signatures of any such new Authorised Officers.

#### 20.5 **Notification of Default**

- (a) The Borrower shall notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly upon a request by the Lender, the Borrower shall supply to the Lender a certificate signed by two of its directors or senior officers on its behalf certifying

that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

20.6 **[Not used]**

21. **[NOT USED]**

22. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 22 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

22.1 **Authorisations**

The Borrower shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Lender of,

any Authorisation required to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document, and to the extent that failure by it to obtain or maintain such Authorisation is reasonably likely to have a Material Adverse Effect any Authorisation required for it to carry on its business.

22.2 **Compliance with laws**

The Borrower shall comply in all respects with all laws to which it may be subject.

22.3 **Negative pledge**

Except as permitted under paragraph (c) below:

- (a) the Borrower undertakes that it shall not create or permit to subsist any Security Interest over any of its assets.
- (b) Without limiting paragraph (a), the Borrower undertakes that it shall not:
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or its Affiliate;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any title retention arrangement in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset;
  - (iv) enter into any arrangement under which money, or the benefit of a bank or other account, may be applied, set-off or made subject to a combination of accounts;
  - (v) enter into any other preferential arrangement having a similar effect.

- (c) Paragraphs (a) and (b) above do not apply to any Security Interest, arrangement or transaction entered into:
- (i) under any Finance Document;
  - (ii) with the prior written consent of the Lender which consent may be withheld in the Lender's sole and absolute discretion provided that the Lender may provide its consent to the Borrower granting a Security Interest in favour of another secured creditor if the secured creditor agrees to enter into a priority deed on terms acceptable to the Lender in its sole and absolute discretion;
  - (iii) in accordance with Schedule 11, Clause 8(c); or
  - (iv) as described in Schedule 2, Part I, Clause 4(d) and (e),
- ("Permitted Security Interest").

#### 22.4 Disposals

The Borrower undertakes that it shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset other than in the ordinary course of trading or as expressly permitted in Clause 22.3(c).

#### 22.5 Merger

The Borrower shall not enter into any amalgamation, demerger, merger or corporate reconstruction without the prior written consent of the Lender.

#### 22.6 Change of business

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower from that carried on at the date of this Agreement without the prior written consent of the Lender.

#### 22.7 Insurance

The Borrower shall take out and maintain insurances with a reputable insurer in the manner and to the extent which is in accordance with prudent business practice having regard to the nature of the business and assets of the Borrower (including all insurance required by applicable law).

#### 22.8 Additional Undertakings

The Borrower agrees to comply with the additional undertakings set out in Schedule 11 (*Additional Undertakings*).

### 23. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 23 is an Event of Default (save for Clause 23.14 (*Acceleration*)).

#### 23.1 Non-payment

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable.

23.2 **[Not used]**

23.3 **Other obligations**

The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 23.1 (*Non-payment*)) or with any condition of any waiver or consent by the Lender under or in connection with any Finance Document which the Borrower has accepted as a condition.

23.4 **Misrepresentation**

Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.

23.5 **Cross default**

- (a) Any Financial Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of the Borrower is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default or review event (however described).
- (c) Any commitment for any Financial Indebtedness of the Borrower is cancelled or suspended by a creditor of the Borrower as a result of an event of default or review event (however described).
- (d) Any creditor of the Borrower becomes entitled to declare any Financial Indebtedness of the Borrower due and payable prior to its specified maturity as a result of an event of default or review event (however described).

23.6 **Insolvency**

- (a) The Borrower:
  - (i) is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due;
  - (ii) suspends making payments on any of its debts; or
  - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding the Lender in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) There is a moratorium in respect of any indebtedness of the Borrower.

23.7 **Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;

- (b) a composition, compromise, assignment or arrangement with any creditor of the Borrower other than one or more bilateral arrangements with individual creditors, protection from creditors of the Borrower under any statute, or a dissolution;
- (c) the appointment of a liquidator, provisional liquidator, receiver, receiver and manager, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or
- (d) enforcement of any Security Interest over any asset or assets of the Borrower, or any analogous procedure or step is taken in any jurisdiction.

**23.8 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Borrower.

**23.9 [Not used]**

**23.10 Unlawfulness**

It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents or any Security created or expressed to be created or evidenced by the Security Documents ceases to be effective.

**23.11 Repudiation**

The Borrower repudiates or rescinds a Finance Document or evidences an intention to repudiate or rescind a Finance Document or any Security.

**23.12 Material Adverse Effect**

Any event or circumstance occurs which the Lender believes has or is reasonably likely to have a Material Adverse Effect.

**23.13 Vitiating of Finance Documents**

A provision of a Finance Document is or becomes or is claimed by a party other than the Lender to be wholly or partly invalid, void, voidable or unenforceable in any material respect.

**23.14 Additional Events of Default**

Any event or circumstance described in Schedule 12 (*Additional Events of Default*) occurs.

**23.15 Acceleration**

On and at any time after the occurrence of an Event of Default the Lender may:

- (a) by notice to the Borrower:
  - (i) cancel the Commitments whereupon they shall immediately be cancelled;
  - (ii) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or

- (iii) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender; and/or
- (b) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents or any Security.

Released under RTI

**SECTION 9  
CHANGES TO PARTIES**

**24. CHANGES TO THE LENDER**

**24.1 Assignments and novations by the Lender**

Subject to this Clause 24, the Lender (the "**Existing Lender**") may:

- (a) assign any of its rights; or
  - (b) novate any of its rights and obligations,
- under the Finance Documents to any person (the "**New Lender**").

**24.2 Conditions of assignment or novation**

- (a) The consent of the Borrower is not required for an assignment or novation by the Existing Lender.
- (b) [Not used].
- (c) An assignment will only be effective on:
  - (i) receipt by the Existing Lender (whether in the assignment agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Existing Lender) that the New Lender will assume the same obligations to the Borrower as it would have been under if it was the Original Lender; and
  - (ii) performance by the Existing Lender of all necessary checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Existing Lender shall promptly notify to the New Lender.
- (d) A novation will only be effective:
  - (i) if the procedure set out in Clause 24.4 (*Procedure for novation*) is complied with; and
  - (ii) on performance by the Existing Lender of all necessary similar checks under all applicable laws and regulations in relation to such novation to a New Lender, the completion of which the Existing Lender shall promptly notify to the New Lender.
- (e) If:
  - (i) the Lender assigns or novates any of its rights or obligations under the Finance Documents; and
  - (ii) as a result of circumstances existing at the date the assignment, novation or change occurs, the Borrower would be obliged to make a payment to the New Lender under Clause 13 (*Tax Gross-up and Indemnities*) or Clause 14 (*Increased Costs*),

then the New Lender is only entitled to receive payment under those Clauses to the same extent as the Existing Lender would have been if the assignment, novation or change had not occurred.

- (f) The Lender may not assign or novate any of its rights or obligations under the Finance Documents, if the New Lender would be entitled to exercise any rights under Clause 8.1 (*Illegality*) as a result of circumstances existing as at the date the assignment, novation or change is proposed to occur.
- (g) The Lender must bear its own costs and expenses (including legal fees) in connection with any such assignment or novation.
- (h) The Lender may disclose to a potential assignee, novatee or transferee of the Lender's interest in any Finance Document any information concerning any Finance Document or any party to the Finance Documents.

#### 24.3 Limitation of responsibility of Existing Lender

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
  - (ii) the financial condition of the Borrower or any other person;
  - (iii) the performance and observance by the Borrower or any other person of its obligations under the Finance Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities and any other person in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities and any other person whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
  - (i) accept a novation or re-assignment from a New Lender of any of the rights and obligations assigned or novated under this Clause 24; or

- (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower or any other person of its obligations under the Finance Documents or otherwise.

#### 24.4 Procedure for novation

- (a) Subject to the conditions set out in Clause 24.2 (*Conditions of assignment or novation*) a novation is effected in accordance with paragraph (c) below when the Borrower receives a duly completed and executed Transfer Certificate delivered to it by the Existing Lender and the New Lender.
- (b) Each Party other than the Existing Lender irrevocably authorises the Existing Lender to execute any Transfer Certificate on its behalf.
- (c) On the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to novate all its rights and obligations under the Finance Documents:
    - (A) each of the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "**Discharged Rights and Obligations**");
    - (B) each of the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
    - (C) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the obligations owed by the Existing Lender under the Finance Documents; and
  - (ii) to the extent that in the Transfer Certificate the Existing Lender seeks to novate (some but not all) of its rights and obligations under the Finance Documents]:
    - (A) each of the Borrower and the New Lender are taken to be parties to a new agreement (the "**New Facility Agreement**") between them on the same terms as this Agreement except that:
      - (1) references to the Original Lender are replaced with references to the New Lender;
      - (2) the "Commitment" is taken to be the amounts shown as such in the Transfer Certificate (the "**New Lender's Commitment**");
    - (B) each of the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another under the New Facility Agreement ("**Assumed Rights and Obligations**") which are identical to the obligations and rights they would have

had if the New Lender had made under the New Facility Agreement to the Borrower on the relevant date and in an amount equal to the relevant proportion a Loan corresponding to each such Loan outstanding on the Transfer Date (where:

- (1) “relevant date” means the date on which the Loan was provided by the Existing Lender; and
  - (2) “relevant proportion” means the proportion which the New Lender’s Commitment bears to the relevant Commitment of the Existing Lender prior to the Transfer Date)
- (C) each of the Borrower and the Existing Lender shall be released from obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled in each case to the extent those obligations and rights corresponds to the Assumed Rights and Obligations.
- (iii) for the purposes of this Agreement Commitments, Loans and rights and obligations will be taken to have been transferred under a Transfer Certificate even though it operates as a novation and Commitments, Loans and rights and obligations are replaced rather than transferred.

**24.5 Copy of Transfer Certificate or assignment agreement to Borrower**

The Existing Lender shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an assignment agreement, send to the Borrower a copy of that Transfer Certificate or assignment agreement.

**24.6 [Not used]**

**25. ASSIGNMENT AND NOVATION BY THE BORROWER**

The Borrower may not assign any of its rights or novate any of its rights or obligations under the Finance Documents without the prior written consent of the Lender.

**SECTION 10  
THE LENDER**

26. **[NOT USED]**

27. **CONDUCT OF BUSINESS BY THE LENDER**

No provision of this Agreement will:

- (a) interfere with the right of the Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige the Lender to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige the Lender to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

Released under RTI

**SECTION 11**  
**ADMINISTRATION**

**28. PAYMENT MECHANICS**

**28.1 Payments to the Lender**

- (a) On each date on which the Borrower is required to make a payment under a Finance Document, the Borrower shall make the same available to the Lender (unless a contrary indication appears in a Finance Document) for value on the due date at the time in immediately available funds.
- (b) Payment shall be made to such account at the city of the Lender with such bank as the Lender specifies.

**28.2 Distributions to the Borrower**

The Lender may (with the consent of the Borrower or in accordance with Clause 29 (*Set-off*)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

**28.3 Partial payments**

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Lender shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
  - (i) **first**, in or towards payment pro rata of any amounts payable but unpaid in respect of fees, costs, expenses, losses or liabilities of the Lender under the Finance Documents;
  - (ii) **secondly**, in or towards payment of any accrued interest, fees or commission due but unpaid under the Finance Documents;
  - (iii) **thirdly**, in or towards payment of any principal due but unpaid under the Finance Documents; and
  - (iv) **fourthly**, in or towards payment of any other sum due but unpaid under the Finance Documents.
- (b) The Lender may vary the order set out in paragraphs (a)(i) to (a)(iv) above inclusive.
- (c) Paragraphs (a) and (b) above will override any appropriation made by the Borrower.

**28.4 No set-off by the Borrower**

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

## 28.5 **Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

## 28.6 **Currency of account**

- (a) Australian Dollars is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

## 28.7 **[Not used]**

## 28.8 **[Not used]**

## 28.9 **Anti-money laundering**

- (a) The Lender may delay, block or refuse to process any payment or other transaction without incurring any liability if the Lender knows or reasonably suspects that the transaction or the application of its proceeds will:
  - (i) breach, or cause the Lender to breach, any applicable laws or regulations of any jurisdiction (including any sanctions); or
  - (ii) allow the imposition of any penalty on the Lender or its Affiliates under any such law or regulation,including where the transaction or the application of its proceeds involves any entity or activity the subject of any applicable sanctions of any jurisdiction binding on the Lender or its Affiliate, or the direct or indirect proceeds of unlawful activity.
- (b) As soon as practicable after the Lender becomes aware that it will delay, block or refuse to process a transaction under paragraph (a), it will notify the Borrower and consult in good faith but in each case only to the extent the Lender determines it is legally permitted to do so. In making that determination the Lender shall act reasonably.
- (c) The Borrower shall promptly advise the Lender if it enters into any Finance Document in the capacity as agent and promptly supply, or procure the supply of, such information as may be reasonably requested by the Lender from time to time in relation to any principal for which the Borrower may be acting.
- (d) The Borrower undertakes to exercise its rights and perform its obligations under the Finance Documents in accordance with all applicable laws or regulations relating to anti-money laundering, counter-terrorism financing or sanctions.

## 29. SET-OFF

The Lender may, but need not, set off any matured obligation due from the Borrower under the Finance Documents against any obligation owed by the Lender to the Borrower (whether or not matured), regardless of the place of payment, booking branch or currency of either obligation. This right of set-off does not limit or affect any other right of set-off available to the Lender.

## 30. NOTICES

### 30.1 Communications in writing

Any communication or document to be made or delivered under or in connection with the Finance Documents:

- (a) must be in writing;
- (b) in the case of:
  - (i) a notice by the Borrower; or
  - (ii) a specification of a bank or account by the Lender under Clause 28.1(b) (*Payments to the Lender*),

must be signed by an Authorised Officer of the sender (directly or with a facsimile signature), subject to Clause 30.4 (*Email communication*) and Clause 30.5 (*Reliance*); and

- (c) unless otherwise stated, may be made or delivered by fax, by letter or by email.

### 30.2 Addresses

The address, email address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that specified in Schedule 1 (*The Original Parties*) or notified in writing to the Lender, on or prior to the date on which it becomes a Party; and
- (b) in the case of the Lender, that specified in Schedule 1 (*The Original Parties*) or notified in writing to the Borrower, on or prior to the date on which it becomes a Party,

or any substitute address, fax number, email address or department or officer as the Party may notify to the Lender or the Borrower (as applicable) by not less than five Business Days' notice.

### 30.3 Delivery

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents will be taken to be effective or delivered:

(i) if by way of letter or any physical communication, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address; or

(ii) if by way of email, as specified in Clause 30.4 (*Email communication*),

and, in the case of a communication, if a particular department or officer is specified as part of its address details provided under Clause 30.2 (*Addresses*), if addressed to that department or officer.

(b) A communication by fax or email after business hours in the city of the recipient will be taken not to have been received until the next opening of business in the city of the recipient.

### 30.4 **Email communication**

(a) Any communication or document under or in connection with the Finance Documents may be made by or attached to an email and will be effective or delivered only:

(i) in the case of a notice to the Lender of a Default or Event of Default, when actually opened in legible format by the recipient Party;

(ii) in all other cases, on the first to occur of the following:

(A) when it is dispatched by the sender to each of the email addresses specified by the recipient, unless for each of the addresses, the sender receives an automatic notification that the email has not been received (other than an out of office greeting for the named addressee) and it receives the notification before 2 hours after the last to occur (for all addresses) of

(1) dispatch, if in business hours in the city of the address; or

(2) if not, the next opening of business in such city,

(B) the sender receiving a message from the intended recipient's information system confirming delivery of the email; and

(C) the email being available to be read at one of the email addresses specified by the sender; and

(iii) if the email is in an appropriate and commonly used format, and any attached file is a pdf, jpeg, tiff or other appropriate and commonly used format.

(b) In relation to an email with attached files:

(i) if the attached files are more than 3 MB in total, then:

(A) at the time of dispatch the giver of the email must send a separate email without attachments notifying the recipient of the dispatch of the email; and

- (B) if the recipient notifies the sender that it did not receive the email with attached files, and the maximum size that is able to receive under its firewalls, then the sender shall promptly send to the recipient the attached files in a manner that can be received by the recipient; and
  - (ii) if the recipient of the email notifies the sender that it is unable to read the format of an attached file or that an attached file is corrupted, specifying appropriate and commonly used formats that it is able to read, the sender must promptly send to the recipient the file in one of those formats or send the attachment in some other manner; and
  - (iii) if within two hours of:
    - (A) dispatch of the email if in business hours in the city of the recipient; or
    - (B) if not, the next opening of business in the city of the recipient,the recipient notifies the sender as provided in subparagraph (i)(B) or (ii), then the relevant attached files will be taken not to have been received until the sender complies with that subparagraph.
- (c) An email which is a covering email for a notice signed by the Borrower's authorised signatory does not itself need to be signed by an authorised signatory.
- (d) Email and other electronic notices from the Lender generated by Loan IQ or other system software do not need to be signed.

### 30.5 Reliance

- (a) Any communication or document sent under this Clause 30 can be relied on by the recipient if the recipient reasonably believes it to be genuine and (if such a signature is required under Clause 30.1(b) (*Communications in writing*)) it bears what appears to be the signature (original or email) of an authorised signatory of the sender (without the need for further enquiry or confirmation).
- (b) Each Party must take reasonable care to ensure that no forged, false or unauthorised notices are sent to another Party.

### 30.6 English language

- (a) Any notice or other communication given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## 31. CALCULATIONS AND CERTIFICATES

### 31.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

### 31.2 Certificates and Determinations

Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### 31.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

## 32. PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## 33. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

## 34. [NOT USED]

## 35. PPSA PROVISIONS

### 35.1 Exclusion of certain provisions

Where the Lender has a security interest (as defined in the PPSA) under any Finance Document, to the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
  - (i) the Lender with the benefit of the security interest need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
  - (ii) sections 142 and 143 of the PPSA are excluded;
- (b) for the purposes of section 115(7) of the PPSA, the Lender with the benefit of the security interest need not comply with sections 132 and 137(3);

- (c) each Party waives its right to receive from the Lender any notice required under the PPSA (including a notice of a verification statement);
- (d) if the Lender with the benefit of a security interest exercises a right, power or remedy in connection with it, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Lender states otherwise at the time of exercise. However, this Clause does not apply to a right, power or remedy which can only be exercised under the PPSA; and
- (e) if the PPSA is amended to permit the Parties to agree not to comply with or to exclude other provisions of the PPSA, the Lender may notify the Borrower that any of these provisions is excluded, or that the Lender needs not comply with any of these provisions.

This does not affect any rights a person has or would have other than by reason of the PPSA and applies despite any other Clause in any Finance Document.

### 35.2 Further assurances

Whenever the Lender requests the Borrower to do anything:

- (a) to ensure any Finance Document (or any security interest (as defined in the PPSA) or other Security under any Finance Document) is fully effective, enforceable and perfected with the contemplated priority;
- (b) for more satisfactorily assuring or securing to the Lender the property the subject of any such security interest or other Security in a manner consistent with the Finance Documents; or
- (c) for aiding the exercise of any power in any Finance Document,

the Borrower shall do it promptly at its own cost. This may include obtaining consents, signing documents, getting documents completed and signed and supplying information, delivering documents and evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any property the subject of any security interest or Security.

36. [NOT USED]

### 37. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

### 38. INDEMNITIES AND REIMBURSEMENT

All indemnities and reimbursement obligations (and any other payment obligations of the Borrower) in each Finance Document are continuing and survive termination of the Finance Document, repayment of the Loans and cancellation or expiry of the Commitments.

39. **ACKNOWLEDGEMENT**

Except as expressly set out in the Finance Documents none of the Lender or any of its advisers have given any representation or warranty or other assurance to the Borrower in relation to the Finance Documents and the transactions they contemplate, including as to tax or other effects. The Borrower has not relied on any of them or on any conduct (including any recommendation) by any of them. The Borrower has obtained their own tax and legal advice.

The Code of Banking Practice does not apply to the Finance Documents and the transactions under them.

Released under RTI

**SECTION 12**  
**GOVERNING LAW AND ENFORCEMENT**

**40. GOVERNING LAW**

This Agreement is governed by Tasmanian law.

**41. ENFORCEMENT**

**41.1 Jurisdiction**

- (a) The courts having jurisdiction in Tasmania have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) (a "**Dispute**").
- (b) The Parties agree that those courts are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraph (a) above, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

**41.2 [Not used]**

**SECTION 13**  
**State provisions**

**42. DISCLOSURE**

- (a) Despite any confidentiality or intellectual property right subsisting in the Finance Documents, a party may publish all or any part of the Finance Documents without reference to another party.
- (b) Nothing in this clause derogates from a party's obligations under the Personal Information Protection Act 2004 (Tas) or the Privacy Act 1988 (Cwlth).

**43. DETERMINATION**

Where the Lender is required or entitled to form or hold an opinion or view under or in relation to this Agreement or any other Finance Document, that opinion or view may be formed or held by an Authorised Officer on behalf of the Lender. This clause does not limit any other way in which the Lender may otherwise form or hold an opinion or view under or in relation to this Agreement or any other Finance Document.

**44. EXERCISE OF POWERS BY LENDER**

- (a) An Authorised Officer of the Lender may act as the agent of the Lender in discharging any functions or exercising any Rights that any Finance Document provides that the Lender is to perform or may exercise.
- (b) A decision that may be made, or is required under any Finance Document to be made, by the Lender may be made by an Authorised Officer of the Lender.
- (c) An Authorised Officer of the Lender may at any time and from time to time exercise on behalf of the Lender any of the Lender's Rights under or in relation to any Finance Document.

**45. NO INTERFERENCE WITH EXECUTIVE DUTIES OR POWERS**

Nothing in this Agreement or any other Finance Document is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this Agreement or any other Finance Document that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**Schedule 1**  
**THE ORIGINAL PARTIES**

Part I  
**The Borrower**

Name of Company	ABN/ACN/ARBN	Address for Service of Notice
Liberty Bell Bay Pty Ltd	ABN 23 004 456 035	<b>Address:</b> Level 34, 50 Bridge Street, Sydney, 2000, New South Wales, Australia

**Email:**  
Out of Scope

**Attention:**

Executive General Manager –  
Liberty Bell Bay;  
Company Secretary

Released under

Part II  
[NOT USED]

Released under RTI

Part III  
**The Original Lender**

Name of Original Lender

The State of Tasmania (acting through the Minister administering the *Tasmanian Development Act 1983* (Tas) and represented by the Department of State Growth

Address for Service of Notice

**Address:**

C/- Department of State Growth  
4 Salamanca Place  
Hobart, Tasmania 7000

**Facsimile:** (03) 6173 0287

**Email:**

secretary@stategrowth.tas.gov.au

**Attention:** Secretary, Department of State Growth

Released under RTI

**Schedule 2**  
**CONDITIONS PRECEDENT**

Part I  
**Conditions Precedent To Initial Utilisation**

1. **Verification certificate**
  - (a) A verification certificate given by 2 directors of the Borrower substantially in the form as set out in Part III of this Schedule, with the attachments referred to in that form, and dated no earlier than 1 day before the first Utilisation Date.
  - (b) A certificate signed by an Authorised Officer of each the Borrower, substantially in the form provided to the Borrower prior to signing this Agreement setting out details required by the Lender for the purposes of registering financing statements or financing change statements on the register under the PPSA or otherwise perfecting security interests arising under the Finance Documents.
2. **Finance Documents**
  - (a) This Agreement duly executed.
  - (b) Each Security Document duly executed other than the Mortgage.
3. **[Not used]**
4. **Other documents and evidence**
  - (a) A copy of any other Authorisation or other document, opinion or assurance:
    - (i) required to execute the Finance Documents; or
    - (ii) which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
  - (b) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 12 (*Fees*) and Clause 17 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date (to the extent not capitalised in accordance with the terms of this Agreement).
  - (c) Details satisfactory to the Lender regarding each shipment of ore, and in respect of the shipment of Blended Ore, the deposit, in each case, as described in Clause 3.1 (*Purpose*), including:
    - (i) copies of provisional invoices;
    - (ii) copies of email or other written correspondence regarding each shipment; and

- (iii) copies of any shipping documentation.
- (d) The Lender, in its sole and absolute discretion, notifying the Borrower that the Lender has completed and is satisfied by any and all due diligence required by the Lender, including in respect of the security registrations by Boral.
- (e) If requested by the Lender, an executed priority deed between the Borrower and Boral on terms acceptable to the Lender.
- (f) Copies of director resolutions for the Borrower approving the terms of and transactions contemplated by the Finance Documents and stating:
  - (i) that the Loan is of overall commercial benefit to the Borrower; and
  - (ii) that the Borrower is solvent and will not become insolvent because of the Loan.
- (g) Registrations (in a form and substance satisfactory to the Lender) of all Security Interests other than the Mortgage (but including caveats in relation to the property which is to be subject to the Mortgage) created under the Finance Documents on the register held under the PPSA and with the Tasmanian Land Titles Office (as relevant).
- (h) Evidence satisfactory to the Lender that any Security Interest registered by Traxys has been released and withdrawn or such other evidence regarding that Security Interest as the Lender accepts in its sole and absolute discretion.

Part II  
[NOT USED]

Released under RTI

Part III  
**Form of Verification Certificate**

From: Liberty Bell Bay Pty Ltd (ABN 23 004 456 035)

To: The State of Tasmania (acting through the Minister administering the *Tasmanian Development Act 1983* (Tas) and represented by the Department of State Growth

Liberty Bell Bay Pty Ltd – **Facility Agreement**

**Dated [ ] (the "Agreement")**

[I am a director]/[We are directors] of Liberty Bell Bay Pty Ltd (ABN 23 004 456 035) of [address] ("**Borrower**") and [am]/[are each] authorised to execute this Certificate in the name of the Borrower.

[I/We] refer to the Agreement. Terms defined in the Agreement shall have the same meaning in this certificate unless given a different meaning in this certificate.

Attached are complete copies of the following:

1. The constitutional documents of the Borrower.
2. Extracts of minutes of a meeting of directors of the Borrower:
  - (a) Approving the terms of, and the transactions contemplated by, the Finance Documents to which it is expressed to be a party and resolving that it execute the Finance Documents to which it is expressed to be a party;
  - (b) Resolving that the Loan is of overall commercial benefit to the Borrower and that the Borrower is solvent and will not become insolvent because of the Loan;
  - (c) Authorising the execution of [each Finance Document to which it is expressed to be a party on its behalf]/[a power of attorney for execution of each Finance Document to which it is expressed to be a party]; and
  - (d) Authorising a specified person or persons, on its behalf, as authorised signatory to sign and/or dispatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is expressed to be a party.]
3. [Any power of attorney [duly stamped and registered where necessary] under which the Borrower executed any Finance Document to which it is expressed to be a party, executed under common seal or by two directors or a director and a secretary.]

The Borrower is solvent. It is not prevented by Chapter 2E of the *Corporations Act 2001* from entering into and performing any of the Finance Documents to which it is expressed to be a party.

Borrowing or guaranteeing, as appropriate, the Commitments would not cause any borrowing, guaranteeing or similar limit binding on the Borrower to be exceeded.

Director

[Director]

Released under RTI

### Schedule 3

#### REQUESTS

##### Part I

##### Utilisation Request

##### Loans

From: Liberty Bell Bay Pty Ltd (ABN 23 004 456 035)

To: The State of Tasmania (acting through the Minister administering the *Tasmanian Development Act 1983* (Tas) and represented by the Department of State Growth

Dated:

Dear Sirs

**Liberty Bell Bay Pty Ltd – Facility Agreement  
dated [            ] (the "Agreement")**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [            ] (or, if that is not a Business Day, the next Business Day)

Amount: [            ] (Note: this is a USD amount. Once AUD is converted to USD in accordance with the Agreement, the amount of the Loan will be the relevant AUD amount.)

3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) of the Agreement is satisfied on the date of this Utilisation Request [except as described in the notice dated [\*] given to you, a copy of which is attached].

4. The Borrower requests the Lender to convert the proceeds of this Loan to USD in accordance with this Agreement. The USD proceeds of such conversion should be credited to:

Payee [ #insert# ]

Bank name [ #insert# ]

Physical Branch Address [ #insert# ]

Branch code / BSB [ #insert# ]

Account Name [insert#]  
Account Number [insert#]  
Swift Code [insert where applicable#]  
IBAN [insert where applicable#]

5. This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
Liberty Bell Bay Pty Ltd (ABN 23 004 456 035)

Released under RTI

Part II  
[NOT USED]

Released under RTI

**Schedule 4**  
**FORM OF TRANSFER CERTIFICATE**

To: Liberty Bell Bay Pty Ltd (ABN 23 004 456 035)

From: [*The Existing Lender*] (the "**Existing Lender**") and [*The New Lender*] (the "**New Lender**")

Dated:

**Liberty Bell Bay Pty Ltd – Facility Agreement**  
**dated [            ] (the "Agreement")**

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 24.4 (*Procedure for novation*) of the Agreement:
  - (a) The Existing Lender and the New Lender agree to the Existing Lender and the New Lender with effect from and including the Transfer Date novating in accordance with Clause 24.4 (*Procedure for novation*) of the Agreement [all/that portion]<sup>1</sup> of the Existing Lender's Commitment and Loans under the Agreement specified in the Schedule, and all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents[ which relate to that portion].
  - (b) The Transfer Date is [            ].
  - (c) To the extent permitted by law, the Existing Lender assigns to the New Lender all rights of action that it may have to the extent they relate to its novated Commitment and its corresponding rights and obligations and all sums provided under or in connection with the novated Commitment.
  - (d) The address, fax number and attention details for notices of the New Lender for the purposes of Clause 30.2 (*Addresses*) of the Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraphs (a) and (c) of Clause 24.3 (*Limitation of responsibility of Existing Lender*) of the Agreement.

---

<sup>1</sup> If the Existing Lender only assigns a portion this may require further agreement between the Existing Lender and the New Lender and additional mechanics to manage this process.

4. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
5. This Transfer Certificate is governed by [*name of State law*].
6. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.
7. [*Where the transferee is a trustee under Australian law of a fund, this certificate may if the Existing Lender agrees contain a provision limiting its liability under the Finance Documents to fund assets except to the extent its right to apply the fund assets towards satisfaction of that liability is impaired because of a breach of trust or other impropriety, such provision to be in the following form or as otherwise agreed by the Existing Lender. The Existing Lender's decision is its own. It need not consult or obtain instructions and is not bound by instructions.*
  - (a) *Trustee<sup>2</sup> enters into and performs this Transfer Certificate and the Agreement and the transactions they contemplate only as trustee of the Trust, except where expressly stated otherwise. This applies also in respect of any past and future conduct (including omissions) relating to this Transfer Certificate and the Agreement or those transactions.*
  - (b) *Under and in connection with this Transfer Certificate and the Agreement and those transactions and conduct:*
    - (i) *Trustee's liability (including for negligence) is limited to the extent it can be satisfied out of the assets of the Trust. Trustee need not pay any such liability out of other assets;*
    - (ii) *another party may only do the following (but any resulting liability remains subject to this Clause):*
      - (A) *prove and participate in, and otherwise benefit from, any form of insolvency administration of Trustee but only with respect to Trust assets;*
      - (B) *exercise rights and remedies with respect to Trust assets, including set-off;*
      - (C) *enforce its security (if any) and exercise contractual rights; and*
      - (D) *bring any other proceedings against Trustee, seeking relief or orders that are not inconsistent with the limitations in this Clause,*  
*and may not otherwise:*
      - (E) *bring proceedings against Trustee;*

---

<sup>2</sup> Replace with defined term for the party which is a trustee.

- (F) *take any steps to have Trustee placed into any form of insolvency administration (but this does not prevent the appointment of a receiver, or a receiver and manager, in respect of Trust assets); or*
  - (G) *seek by any means (including set-off) to have a liability of Trustee to that party (including for negligence) satisfied out of any assets of Trustee other than Trust assets.*
- (c) *Paragraphs (a) and (b) apply despite any other provision in this Transfer Certificate or the Agreement but do not apply with respect to any liability of Trustee to another party (including for negligence) to the extent that Trustee has no right or power to have Trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in any case because Trustee has acted beyond power or improperly in relation to the Trust.*
- (d) *The limitation in paragraph (b)(i) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in paragraph (b)(ii), and interpreting this Transfer Certificate and the Agreement and any security for them, including determining the following:*
- (i) *whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as payable if they would have been owed had a suit or action barred under paragraph (b)(ii) been brought);*
  - (ii) *the calculation of amounts owing; or*
  - (iii) *whether a breach or default has occurred,*
- but any resulting liability will be subject to the limitations in this Clause.]*

## THE SCHEDULE

### Commitment/rights and obligations to be transferred

<b>Part 1 Existing Lender</b>	<b>Commitments after novation</b>	<b>Address Details</b>
		<i>[Only insert if there are changes]</i>
<b>Part 2 New Lender</b>	<b>Commitments after novation</b>	<b>Address Details</b>
		<i>[Insert relevant details of address, account]</i>

[This Transfer Certificate is executed as a deed]<sup>3</sup>

[Existing Lender]

By:

[New Lender]

By:

<sup>3</sup> Insert (and use appropriate signature blocks) when the Agreement is executed as a deed.

**Schedule 5**

[NOT USED]

Released under RTI

**Schedule 6**  
**[NOT USED]**

Released under RTI

**Schedule 7**

[NOT USED]

Released under RTI

**Schedule 8**

[NOT USED]

Released under RTI

**Schedule 9**  
**TIMETABLES**

**Part I**  
**Loans**

Delivery of a duly completed Utilisation Request (Clause 5.1 (*Delivery of a Utilisation Request*))

11 a.m. (Hobart time) on the day which is 1 Business Day before the proposed Utilisation Date

Released under RTH

**Schedule 10**

[NOT USED]

Released under RTI

## Schedule 11

### ADDITIONAL UNDERTAKINGS

#### 1. Facility Refund

- (a) The Borrower undertakes to:
- (i) procure that South32 or any other ore supplier pays the amount of any Facility Refund immediately to the Lender; or
  - (ii) if:
    - (A) the Borrower receives any Facility Refund, pay that Facility Refund promptly to the Lender; or
    - (B) if it is not practical for the Borrower to pay the Facility Refund promptly to the Lender:
      - (1) procure that any Facility Refund is paid directly to a locked bank account to be established with an ADI satisfactory to the Lender and to which the Lender is a signatory to withdrawals; and
      - (2) pay the amount of any Facility Refund to the Lender promptly upon receipt of that Facility Refund into the account specified in paragraph (1).
- (b) The Lender will account for the payments required in paragraph (a) as a partial mandatory prepayment of the Loans.
- (c) Paragraph (a) will not apply to the extent that the Lender gives the Borrower prior written consent to use all or part of a Facility Refund to fund operating expenses agreed by the Lender in its sole and absolute discretion, in which case the Borrower undertakes only to apply the proceeds of the Facility Refund towards those expenses.

#### 2. GST Refund

The Borrower undertakes to procure that:

- (a) any GST refund for GST paid on the purchase of Primary Ore; and
- (b) any GST refund for GST paid on the purchase of the Blended Ore which is funded by a Loan,

(GST Refund) be, promptly after receipt by the Borrower, either:

- (c) paid directly to the Lender; or
- (d) if it is not practical to pay the GST Refund directly to the Lender:

- (i) paid directly to a locked bank account to be established with an ADI satisfactory to the Lender and to which the Lender is a signatory to withdrawals; and
- (ii) promptly upon receipt into the account specified in paragraph (i), paid directly from that account to the Lender.

The Lender will account for the payments required in paragraph (c) or (d) as a partial mandatory prepayment of the Loans.

### 3. **Currency conversion**

- (a) The Borrower acknowledges that all Loans and payments, repayments and prepayments of principal and interest and any other amounts will be in Australian dollars.
- (b) The Lender may, if requested by the Borrower:
  - (i) convert the proceeds of any Utilisation from Australian dollars into US Dollars; and
  - (ii) pay the US Dollar proceeds of such Utilisation:
    - (A) in the case of any Loan to be applied for the purpose described in Clause 3.1(a) (*Purpose*), to South32 in satisfaction of the amount specified in the provisional invoice for a shipment of the Primary Ore; and
    - (B) in the case of any Loan to be applied for the purpose described in Clause 3.1(b) (*Purpose*), to South32 or to any other ore supplier in satisfaction of the deposit required for a shipment of the Blended Ore.

Prior to any such conversion, the proceeds of any Utilisation will be held by the Lender.

- (c) The Borrower acknowledges and agrees that the rate of conversion is at the sole risk of the Borrower. Any conversion under paragraph (b) will not affect any obligation of the Borrower to pay, repay or prepay principal and interest and any other amounts in Australian dollars.
- (d) Any costs incurred by the Lender in connection with the currency conversion described in paragraph (b) will be reimbursed by the Borrower.
- (e) Subject to paragraph (f) below, unless otherwise paid by the Borrower, the costs reimbursed under paragraph (d) shall be capitalised immediately by way of an automatic Utilisation of the Facility.
- (f) Capitalisation of the costs reimbursed under paragraph (d) is subject to:
  - (i) no Event of Default continuing or resulting from that amount being capitalised; and

- (ii) the Available Commitment not being exceeded by that amount being capitalised,

and the requirements of Clause 4 (*Conditions of Utilisation*) and Clause 5 (*Utilisation*) do not otherwise apply.

- (g) If paragraph (f) is not complied with, the costs reimbursed under paragraph (d) will not automatically capitalise and must be paid by the Borrower on the date of Financial Close.

#### 4. **Reporting**

Without limiting any other reporting requirements, the Borrower undertakes to provide to the Lender the following documents in a form acceptable to the Lender:

- (a) monthly management accounts, as soon as possible at the end of each calendar month and in any event within 5 Business Days of the end of the preceding calendar month;
- (b) twice-weekly reports on the Borrower's cash flow, steps taken to resume production by 30 September 2025, progress in obtaining Sales Contracts and the status of its production and other activities in respect of that contract. Such reports must be provided on each Monday and Thursday; and
- (c) monthly details regarding the Borrower's material creditors and debtors, including amounts owing or owed in respect of each of them, as soon as possible at the end of each calendar month and in any event within 5 Business Days of the end of the preceding calendar month.

#### 5. **Resume production**

- (a) The Borrower undertakes to take all necessary steps to resume production of manganese alloy by 30 September 2025 or such later date as the Lender may agree. Necessary steps under this clause include (without limitation) placing orders for all raw materials necessary to resume production of manganese alloy by 30 September 2025 in accordance with a schedule agreed between the Borrower and the Lender in accordance with paragraph (b).
- (b) The Borrower undertakes to provide a schedule to the Lender to resume production of manganese alloy in accordance with paragraph (a) above by 20 August 2025 for approval by the Lender. If the Lender does not approve such schedule, the Borrower must provide an updated schedule until such schedule is approved by the Lender.

#### 6. **Other financing arrangements**

- (a) The Borrower undertakes not to drawdown on any preexisting financing arrangements with other financiers without the prior written consent of the Lender.
- (b) The Borrower undertakes not to incur Financial Indebtedness except under the Finance Documents without the prior written consent of the Lender.

- (c) The Borrower may from time to time request the Lender's consent to incur Financial Indebtedness or grant Security Interests for the purpose of funding specific purchases of manganese ore, manganese alloy or coke necessary to continue operations and business. The Lender will notify the Borrower whether or not such consent is provided and/or whether any conditions apply to any such consent, in each case in its sole and absolute discretion.

7. **Related Party disposals**

The Borrower undertakes not to sell, transfer or otherwise dispose of any assets to any Affiliate of the Borrower without the prior written consent of the Lender.

8. **Sales Strategy**

- (a) No later than 13 August 2025, the Borrower must provide to the Lender a written sales strategy detailing:
  - (i) the Borrower's proposed approach to entering into Sales Contracts (including via 'financial middlemen' or 'distributor middlemen') including the Borrower's timetable for this; and
  - (ii) any Financial Indebtedness or Security Interests which will arise under or in connection with the proposed Sales Contracts,(Sales Strategy). The Lender may ask for additional details to be provided and for an updated Sales Strategy.
- (b) The Lender may, in its sole and absolute discretion and subject to any conditions it sees fit, approve in writing the Sales Strategy proposed by the Borrower under paragraph (a).
- (c) To the extent the Lender approves a Sales Strategy under (b):
  - (i) the Borrower is permitted to incur any Financial Indebtedness and grant any Security Interest consistent with that Sales Strategy and subject to any conditions of approval granted by the Lender; and
  - (ii) the Borrower must obtain Sales Contracts in accordance with the Sales Strategy.
- (d) The Borrower undertakes to either:
  - (i) procure that Sales Proceeds be promptly paid directly to the Lender; or
  - (ii) if it is not practical to pay the Sales Proceeds directly to the Lender:
    - (A) procure that any Sales Proceeds be paid directly to a locked bank account to be established with an ADI satisfactory to the Lender and to which the Lender is a signatory to withdrawals from that bank account; and
    - (B) pay any Sales Proceeds to the Lender immediately upon receipt into the bank account specified in paragraph (A).

- (e) The Lender will account for the payments required in paragraph (d) as a partial mandatory prepayment of the Loans.
- (f) Paragraph (d) will not apply to the extent that the Lender gives the Borrower prior written consent to use all or part of the Sales Proceeds to fund operating expenses agreed by the Lender, in which case the Borrower undertakes only to apply the Sales Proceeds towards those expenses.
- (g) Notwithstanding anything else in this Schedule 11, Clause 8, a Sales Contract must not include any Security Interest which negatively impacts the priority of any of the Lender's Security Interests without the prior written consent of the Lender.
- (h) The Borrower undertakes to comply in all respects with the terms of each Sales Contract.
- (i) The Borrower undertakes not to permit any amendment, variation, waiver or termination in respect of a Sales Contract without the prior written consent of the Lender, except if following this the Sales Contract would continue to be consistent with the Sales Strategy approved by the Lender.
- (j) If a counterparty to a Sales Contract other than the Borrower terminates a Sales Contract, the Borrower will not be in breach of Schedule 11, Clause 8(i) if:
  - (i) the terminating counterparty does not purport to exercise a right to terminate for breach by the Borrower; and
  - (ii) the Borrower is diligently pursuing a replacement Sales Contract which is:
    - (A) consistent with the Sales Strategy approved by the Lender; and
    - (B) likely, in the opinion of the Lender, to be executed within 30 days of the termination of the previous Sales Contract.

9. **Payment of trade creditors**

The Borrower undertakes to pay all creditors within their agreed terms or such extended terms as are accepted by each of those creditors.

10. **Caveat and Mortgage**

- (a) The Borrower undertakes to do all things necessary to assist the Lender in registering a caveat over the land which is to be subject to the Mortgage. The Borrower must not object to any such caveat or take any action or make any application to have any such Caveat removed without the prior consent of the Lender.
- (b) The Borrower must enter into and do all things necessary to assist the Lender to register the Mortgage (in form and substance satisfactory to the Lender) as soon as practicable after the date of this Agreement promptly following any request by the Lender.

11. **Traxys Security Interest**

The Borrower must by 20 August 2025 provide evidence satisfactory to the Lender that the PPSR registrations made by Traxys against the Borrower have been discharged.

Released under RTI

**Schedule 12**  
**ADDITIONAL EVENTS OF DEFAULT**

1. **Non-payment of employees**

The Borrower fails to pay any salaries, wages or other employee entitlements (including superannuation contributions payable by the Borrower) when due and payable, other than a non-material and non-systemic failure to pay caused by an inadvertent miscalculation of entitlements provided it is promptly rectified after it is discovered.

2. **Balance of Blended Ore funding**

The Borrower fails to obtain or (in the opinion of the Lender) is likely to fail to obtain funding sufficient to pay the balance outstanding to the supplier of the Blended Ore by 17 October 2025.

3. **Sales contracts**

Any Sales Contract is terminated without the Lender's prior written consent and Schedule 11 Clause 8(j) does not apply.

4. **Change in control**

Any person or group of persons acting in concert who do not Control the Borrower on the date of this Agreement obtain Control of the Borrower without the prior written consent of the Lender.

5. **Caveat and Mortgage**

The Borrower fails to comply with Schedule 11, Clause 10.

**Signing**

**Grantor**

**EXECUTED** by **LIBERTY BELL BAY**  
(**ABN 23 004 456 035**) in accordance with  
section 127(1) of the *Corporations Act*  
*2001* (Cth):

Out of Scope

Signature of director

.....  
**IAN HUNTER**

Name of director (block letters)

Out of Scope

Signature of director/company secretary

.....  
**SANDIP BISWAS**

Name of director/company secretary (block  
letters)

**Secured Party**

**EXECUTED** as an agreement for and on behalf of the State of Tasmania by The Honourable Felix  
Ashton Ellis MP (being and as the Minister for the time being administering the *Tasmanian*  
*Development Act 1983* (Tas)) in the presence of the witness named below:

Minister's  
signature:

→

Out of Scope

Witness'  
signature:

→

\*Witness  
print  
name:

Out of Scope

ADAM FOSTER

\*Use **BLOCK LETTERS**

\*Witness  
print  
address:

Lvl 5, Salamanca Place  
Hobart, TAS

**Schedule 2, Part I, clause 1(b) certificate**

From: Liberty Bell Bay Pty Ltd (ABN 23 004 456 035)

To: The State of Tasmania (acting through the Minister administering the Tasmanian Development Act 1983 (Tas) and represented by the Department of State Growth.

Date: 2025

Liberty Bell Bay Pty Ltd – Facility Agreement

**Dated on or about the date of this Certificate (the "Agreement")**

We are directors of Liberty Bell Bay Pty Ltd (ABN 23 004 456 035) of Level 34 50 Bridge Street Sydney NSW 2000 ("**Borrower**") and are each authorised to execute this Certificate in the name of the Borrower.

We refer to the Agreement. Terms defined in the Agreement shall have the same meaning in this certificate unless given a different meaning in this certificate.

This is the certificate required under Schedule 2, Part I, clause (b) of the Agreement.

For the purpose of registering financing statements on the register under the PPSA, the Borrower's details are as follows:

1. The Borrower's ACN is 004 456 035.

Out of Scope

SANDIP BISWAS  
Director

# General Security Agreement

Dated 18 August 2025

Liberty Bell Bay Pty Ltd (ABN 23 004 456 035) ("**Grantor**")

The State of Tasmania (acting through the Minister administering the *Tasmanian Development Act 1983* (Tas) and represented by the Department of State Growth ("**Secured Party**")

**King & Wood Mallesons**  
Level 27  
Collins Arch  
447 Collins Street  
Melbourne VIC 3000  
Australia  
T +61 3 9643 4000  
[www.kwm.com](http://www.kwm.com)

# General Security Agreement

## Contents

<b>Details</b>	<b>1</b>
<b>General terms</b>	<b>2</b>
<b>1 Definitions and interpretation</b>	<b>2</b>
1.1 Terms defined in the Facility Agreement	2
1.2 Definitions	2
1.3 General interpretation	5
1.4 Finance Document	7
<b>2 Grantor must pay the Secured Money</b>	<b>7</b>
<b>3 Security</b>	<b>7</b>
3.1 Security interest	7
3.2 Priority	7
3.3 Mandatory action	7
3.4 Consideration	7
3.5 Variations and replacements	8
3.6 Disposed property and proceeds	8
<b>4 Discharge of the Security</b>	<b>8</b>
4.1 Discharge	8
4.2 Final discharge	8
<b>5 Dealings with Collateral</b>	<b>9</b>
5.1 Restricted dealings	9
5.2 Permitted dealings	9
5.3 Revolving Assets	9
5.4 Conversion to Revolving Assets	9
5.5 Inventory	9
5.6 Where the law allows for creation of Encumbrance without consent	9
<b>6 Undertakings</b>	<b>10</b>
6.1 General undertakings	10
6.2 Representations and warranties	10
6.3 Times for making representations and warranties	11
<b>7 Payments</b>	<b>11</b>
7.1 Manner of payment	11
7.2 Amounts payable on demand	11
<b>8 Indemnities</b>	<b>11</b>
8.1 Indemnity	11
8.2 Payment for Grantor's obligations	12
<b>9 Application of payments</b>	<b>12</b>
9.1 Application of money	12

9.2	Money actually received	12
9.3	Suspense account	12
9.4	Remaining money	12
9.5	Credit from date of receipt	13
9.6	Secured Party's statement of indebtedness	13
<b>10</b>	<b>Administrative matters</b>	<b>13</b>
10.1	Deposit of documents	13
10.2	Registration	13
10.3	Further steps	13
10.4	Authority to fill in blanks	14
10.5	Supply of information	14
<b>11</b>	<b>Performance of Grantor's Obligations</b>	<b>14</b>
<b>12</b>	<b>Rights the Secured Party may exercise at any time</b>	<b>14</b>
12.1	Authority to deal	14
12.2	Secured Party may enter	14
12.3	Reasonable notice of entry	15
12.4	Right to rectify	15
12.5	Payment of income to Secured Party	15
12.6	Secured Party not mortgagee in possession	15
<b>13</b>	<b>Default</b>	<b>15</b>
13.1	Ensure no default	15
13.2	When enforceable	15
13.3	Investigation of default	16
13.4	Secured Party's powers on default	16
13.5	Order of enforcement	16
<b>14</b>	<b>Statutory powers and notices</b>	<b>16</b>
14.1	Exclusion of PPSA provisions	16
14.2	Exercise of rights by Secured Party	17
14.3	No notice required unless mandatory	17
14.4	Appointment of nominee for registration	17
<b>15</b>	<b>Receivers</b>	<b>18</b>
15.1	Other rights to appoint	18
15.2	Terms of appointment of Receiver	18
15.3	More than one Receiver	18
15.4	Receiver is Grantor's agent	18
15.5	Receiver's powers	18
<b>16</b>	<b>Disposal of the Collateral is final</b>	<b>19</b>
<b>17</b>	<b>Power of attorney</b>	<b>19</b>
17.1	Appointment	19
17.2	Powers	19

<b>18</b>	<b>Reinstatement of rights</b>	<b>20</b>
<b>19</b>	<b>Notices and other</b>	<b>20</b>
<b>20</b>	<b>General</b>	<b>20</b>
20.1	Prompt performance	20
20.2	Certificates	20
20.3	Discretion in exercising rights	20
20.4	Partial exercising of rights	20
20.5	Conditions of consents, approvals or waivers	20
20.6	No liability for loss	20
20.7	Conflict of interest	21
20.8	Secured Party or Receiver in possession	21
20.9	Remedies cumulative	21
20.10	Other Encumbrances or judgments	21
20.11	Continuing security	21
20.12	Indemnities and reimbursement obligations	21
20.13	Rights and obligations are unaffected	22
20.14	Supervening law	22
20.15	Variation and waiver	22
20.16	Severability of provisions	22
20.17	Receipts	22
20.18	Each signatory bound	23
20.19	Moratorium Legislation	23
20.20	Counterparts	23
20.21	Governing law and jurisdiction	23
20.22	Serving documents	23
	<b>Signing page</b>	<b>24</b>

# General Security Agreement

## Details

### Date

### Parties Grantor and Secured Party

Grantor	Name	Liberty Bell Bay Pty Ltd
	ABN	23 004 456 035
	Email	Out of Scope
	Attention	Executive General Manager – Liberty Bell Bay Company Secretary
Secured Party	Name	The State of Tasmania (acting through the Minister administering the <i>Tasmanian Development Act 1983</i> (Tas) and represented by the Department of State Growth
	Address	C/- Department of State Growth 4 Salamanca Place Hobart, Tasmania 7000
	Facsimile	(03) 6173 0287
	Email	secretary@stategrowth.tas.gov.au
	Attention	Secretary, Department of State Growth

# General Security Agreement

## General terms

---

### 1 Definitions and interpretation

#### 1.1 Terms defined in the Facility Agreement

A term which has a defined meaning in the Facility Agreement has the same meaning when used in this deed unless it is expressly defined in this deed, in which case the meaning in this deed applies.

#### 1.2 Definitions

Unless the contrary intention appears, these meanings apply:

**Attorney** means each attorney appointed by the Grantor under clause 17 ("Power of attorney").

**Authorised Officer** means:

- (a) in the case of the Secured Party, each Secretary, Acting Secretary and Deputy Secretary of the Department, and a nominee of any of them; and
- (b) in the case of the Grantor, any director or company secretary, or any person from time to time nominated as an Authorised Officer by it by a notice to the Secured Party accompanied by certified copies of signatures of all new persons so appointed.

**Collateral** means all the Grantor's present and after-acquired property. It includes anything in respect of which the Grantor has at any time a sufficient right, interest or power to grant a security interest.

**Collection Account** means any account opened with an authorised deposit-taking institution, in the name of the Grantor, designated by the Secured Party as the collection account for the purposes of this deed. If there is a change of authorised deposit-taking institution at which the relevant account is held, it includes any account into which money credited to the Collection Account is transferred.

**Control Event** means:

- (a) in respect of any Collateral that is, or would have been, a Revolving Asset:
  - (i) the Grantor breaches, or attempts to breach clause 5.1 ("Restricted dealings") in respect of the Collateral or takes any step which would result in it doing so; or
  - (ii) a person takes a step (including signing a notice or direction) which may result in Taxes, or an amount owing to an authority, ranking ahead of this security; or
  - (iii) the Secured Party gives a notice to the Grantor that the Collateral is not a Revolving Asset. (However, the Secured Party may only give a notice if the Secured Party reasonably

considers that it is necessary to do so to protect its rights under this deed or if an Event of Default is continuing); or

- (b) in respect of all Collateral that is or would have been a Revolving Asset:
  - (i) a voluntary administrator, liquidator or provisional liquidator is appointed in respect of the Grantor or the winding up of the Grantor begins; or
  - (ii) a Controller is appointed to any of the Grantor's property; or
  - (iii) something having a substantially similar effect to paragraph (i) or (ii) happens under any law.

**Controller** has the meaning it has in 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.

**Department** means the department representing the Crown that is responsible for the administration of this Agreement, or any department that substantially succeeds to its functions.

**Details** means the section of this deed headed "Details".

**Encumbrance** means any:

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

**Facility Agreement** means the Facility Agreement dated 2025 between the Grantor and the Secured Party.

**Finance Documents** has the meaning it has in the Facility Agreement.

**Government Body** includes a body politic, a government (federal, state or local), a governmental, judicial or administrative body, a tribunal, a commission, a department or agency of any government, and a statutory authority or instrumentality.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or

- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Secured Party); or
- (d) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, in respect of any of the above paragraphs; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Secured Party reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.

**Minister** means the Minister administering the *Tasmanian Development Act 1983* (Tas).

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

**Receiver** includes a receiver or receiver and manager.

**Related Entity** has the meaning it has in the Corporations Act.

**Revolving Asset** means any Collateral:

- (a) which is:
  - (i) inventory;
  - (ii) a negotiable instrument;
  - (iii) machinery, plant, or equipment which is not inventory and has a value of less than AS\$1,000 or its equivalent;
  - (iv) book debts;
  - (v) money (including money withdrawn or transferred to a third party from an account of the Grantor with a bank or other financial institution); and
- (b) in relation to which no Control Event has occurred, subject to clause 5.4 ("Conversion to Revolving Assets").

**Secured Money** means all money which the Grantor (whether alone or not) is or at any time may become actually or contingently liable to pay to or for the account of the Secured Party (whether alone or not) for any reason under or in connection with the Finance Documents and whether or not ascertained or currently contemplated.

It includes money (including as a result of a breach or default) by way of principal, interest, fees, costs, indemnities, guarantees, charges, duties, expenses, liquidated or unliquidated damages, and any amount paid or advanced by the Secured Party to protect or maintain any Collateral or any security interest in this deed or for which the Secured Party is liable by reason of any act or omission of the Grantor.

Where the Grantor would have been liable but for its deregistration, or a compromise, deed of arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors or bankruptcy (or any analogous process in any jurisdiction) or a set-off claimed by it, or some other reason, it will be taken still to be liable.

This definition applies:

- (a) whether the liability arises under law or otherwise;
- (b) irrespective of the capacity (whether or not disclosed) in which the Grantor or the Secured Party is or may become entitled or liable;
- (c) whether the Grantor or the Secured Party is liable as principal debtor, surety or otherwise;
- (d) where the liability may become owing on the occurrence of a future event, whether or not it arises from an existing obligation;
- (e) even if a liability to or for the account of the Secured Party, or a Finance Document:
  - (i) is or was assigned or transferred to the Secured Party before on or after the date of this deed, with or without consent; or
  - (ii) was previously secured or not.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or assessed as being payable by any authority together with any fines, penalties and interest in connection with them.

### 1.3 General interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears in this deed:

- (a) labels used for definitions are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (d) a reference to a document also includes any variation, replacement or novation of it;
- (e) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions;

- (f) a reference to "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority, a Government Body or any other entity or organisation;
- (g) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) a reference to a time of day is a reference to Melbourne time;
- (i) a reference to, dollars, \$ or A\$ is a reference to the currency of Australia;
- (j) a reference to "**law**" includes common law, principles of equity and legislation (including regulations);
- (k) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to "**regulations**" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (m) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- (n) a reference to a group of persons is a reference to any 2 or more of them jointly and severally;
- (o) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (p) a reference to accounting standards is a reference to accounting standards, principles and practices generally accepted in the relevant place, consistently applied;
- (q) a reference to an accounting term in an accounting context is a reference to that term as it is used in relevant accounting standards;
- (r) a reference to "**property**" or "**asset**" includes any present or future, real or personal, tangible or intangible property, asset or undertaking and any right, interest or benefit under or arising from it;
- (s) an Event of Default is "continuing" if it has occurred and has not been waived in writing by, or remedied to the satisfaction of, the Secured Party;
- (t) a reference to "**control**" includes control as defined in the PPSA;
- (u) a reference to "**possession**" includes possession as defined in the PPSA;
- (v) a reference to "**this security**" means the security interests created by this deed;
- (w) a reference to a Minister includes, as applicable, that Minister's predecessors and successors in office;
- (x) a reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or functions of which have been substantially transferred, is

taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred;

- (y) a reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office.

#### **1.4 Finance Document**

This deed is a 'Finance Document' for the purposes of the Facility Agreement.

---

## **2 Grantor must pay the Secured Money**

The Grantor agrees to pay the Secured Money in accordance with the terms of the Finance Documents.

---

## **3 Security**

### **3.1 Security interest**

- (a) The Grantor grants a security interest in the Collateral to the Secured Party to secure payment of the Secured Money.
- (b) This security interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over Revolving Assets and a fixed charge over all other Collateral.
- (c) The Grantor does this as absolute or beneficial owner.

### **3.2 Priority**

- (a) Each party intends the security interest granted under this deed to take priority over all other security interests over the Collateral of the Grantor, except for any security interests which are mandatorily preferred by any applicable law.
- (b) Nothing in this deed will be construed as an agreement by the Secured Party to subordinate the security interests created under this deed to any other security interest in the Secured Property at any time.

### **3.3 Mandatory action**

To the extent that any legislation requires that something must be done (such as obtaining consent) before the Grantor may validly grant a security interest in any of the Collateral, the security interest under clause 3.1 ("Security interest") only takes effect in relation to that Collateral when the thing required is done. The Grantor agrees to do everything necessary to ensure that it is done.

### **3.4 Consideration**

The Grantor acknowledges granting this security and incurring obligations and giving rights under this deed for valuable consideration.

### 3.5 Variations and replacements

- (a) The Grantor acknowledges that the Finance Documents may be varied or replaced from time to time.
- (b) The Grantor confirms that the Secured Money includes any amount payable under any Finance Document as varied or replaced. The Grantor confirms that this applies regardless of:
  - (i) how the Finance Document is varied or replaced; and
  - (ii) the reasons for the variation or replacement; and
  - (iii) whether the Secured Money decreases or increases or the Finance Document is otherwise more onerous as a result of the variation or replacement.

### 3.6 Disposed property and proceeds

- (a) If any Collateral is dealt with (whether or not that dealing is authorised by the Secured Party), the security interests created by this deed remain attached to that Collateral and are not released or extinguished unless:
  - (i) the dealing is an absolute transfer of all of the Grantor's rights, title and interests in that Collateral which is expressly permitted or not otherwise prohibited by the Finance Documents; or
  - (ii) the Secured Party has expressly authorised the release of the security interest over the Collateral.
- (b) If any Collateral gives rise to proceeds (by being dealt with or otherwise), the security interest under this deed attaches to the proceeds.

---

## 4 Discharge of the Security

### 4.1 Discharge

Subject to clause 4.2 ("Final discharge"), at the written request and cost of the Grantor, the Secured Party must discharge the Security Interests created under this deed if:

- (a) in the Secured Party's opinion, the Secured Money has been finally paid; and
- (b) the Grantor has fully discharged its obligations under this deed and each other Finance Document.

### 4.2 Final discharge

- (a) The Secured Party is not obliged to discharge the Security Interests under clause 4.1 ("Discharge") if, at the time the requirements of clause 4.1 ("Discharge") are satisfied, the Secured Party is of the opinion that:
  - (i) the Grantor owes further Secured Money contingently or otherwise to the Secured Party; or
  - (ii) the Grantor will owe further Secured Money to the Secured Party within a reasonable time after the date the Grantor requests the discharge of the Security Interests.

- (b) Clause 4.2(a) ("Final discharge") overrides any other clause to the contrary in this deed.

---

## **5 Dealings with Collateral**

### **5.1 Restricted dealings**

The Grantor must not do, or agree to do, any of the following unless it is expressly permitted or not otherwise prohibited by the Finance Documents:

- (a) create or allow another security interest in any Collateral; or
- (b) dispose, or part with possession, of any Collateral.

### **5.2 Permitted dealings**

The Grantor may do any of the following in the ordinary course of the Grantor's ordinary business unless it is prohibited from doing so by another provision in a Finance Document:

- (a) create or allow another interest in, or dispose or part with possession of, any Collateral which is a Revolving Asset; or
- (b) withdraw or transfer money from an account with a bank or other financial institution.

### **5.3 Revolving Assets**

If a Control Event occurs in respect of any Collateral then automatically:

- (a) that Collateral is not (and immediately ceases to be) a Revolving Asset; and
- (b) any floating charge over that Collateral immediately operates as a fixed charge; and
- (c) the Grantor may no longer deal with the Collateral under clause 5.2 ("Permitted dealings").

### **5.4 Conversion to Revolving Assets**

If any Collateral is not, or ceases to be, a Revolving Asset, and becomes subject to a fixed charge or transfer under this clause, the Secured Party may give the Grantor a notice stating that, from a date specified in the notice, the Collateral specified in the notice is a Revolving Asset, or becomes subject to a floating charge or is transferred back to the Grantor. This may occur any number of times.

### **5.5 Inventory**

Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to this security. The Grantor may not remove it without obtaining the specific and express authority of the Secured Party to do so.

### **5.6 Where the law allows for creation of Encumbrance without consent**

If a law entitles the Grantor to create another Encumbrance over the Collateral without the consent of the Secured Party, this clause 3.6 does not operate to

require the Grantor to obtain the Secured Party's consent before creating that other Encumbrance.

However, if the Grantor intends to create another Encumbrance, it agrees to notify the Secured Party at least seven days before it proposes to do so.

---

## 6 Undertakings

### 6.1 General undertakings

The Grantor agrees:

- (a) **(provision of information)** to provide to the Secured Party any information which the Secured Party reasonably requests in relation to the Grantor or any of its assets;
- (b) **(change of Grantor details)** to notify the Secured Party at least 14 days before:
  - (i) the Grantor changes its name as recorded in a public register in its jurisdiction of incorporation or in its constituent documents;
  - (ii) any ACN or ARBN allocated to the Grantor 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); and
  - (iii) the Grantor becomes trustee of a trust, or a partner in a partnership, not stated in the Details; and
- (c) **(PPSA dates)** to notify the Secured Party as soon as it becomes aware of any dates in a registration on the PPSA with respect to the Collateral being or becoming incorrect.

### 6.2 Representations and warranties

- (a) The Grantor represents and warrants to the Secured Party for the benefit of the Secured Party that:
  - (i) it is the legal owner of, and has good title to all of its Collateral and has the right to grant the security interests over its Collateral in the manner contemplated by this deed;
  - (ii) it has disclosed to the Secured Party all material information relating to it, this deed and anything in connection with them reasonably requested by the Secured Party in relation to making any registration on the PPSR or giving any notification in connection with any security interest created by this deed; and
  - (iii) subject to any necessary stamping and registration requirements, this deed creates the security interest which it is expressed to create.
- (b) The Grantor acknowledges that:
  - (i) the representations and warranties provided in this deed:
    - (A) have been relied upon by the Secured Party in entering into the security to which it is a party; and

- (B) survive the execution and delivery of the security and the provision of financial accommodation under these documents; and
- (ii) it has not entered into this deed or any other security on any representation, warranty, assurance, undertaking or statement of the Secured Party or of any person on behalf of the Secured Party.

### **6.3 Times for making representations and warranties**

- (a) The representations and warranties set out in this deed are made on the date of this deed.
- (b) Unless a representation and warranty is expressed to be given on a specific date, each representation and warranty under this deed is deemed to be repeated by the Grantor on each date which is specified under a Finance Document as a day on which representations and warranties are repeated or deemed to be repeated, and if no such date for repetition is specified, on the last date of each calendar quarter.
- (c) When a representation and warranty is repeated, it is repeated by reference to the circumstances existing at the time of repetition.

---

## **7 Payments**

### **7.1 Manner of payment**

The Grantor must make payments (including by way of reimbursement) under this deed:

- (a) in full without set-off or counterclaim, and without any deduction or withholding in respect of Taxes unless prohibited by law; and
- (b) if the payment relates to the Secured Money, in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

### **7.2 Amounts payable on demand**

If an amount payable under a Finance Document is not expressed to be payable on a specified date, that amount is payable by the Grantor on demand by the Secured Party.

---

## **8 Indemnities**

### **8.1 Indemnity**

The Grantor agrees, within 3 Business Days of demand, to indemnify the Secured Party against, and to reimburse and compensate it for, any liability or loss arising from, and any Costs incurred in connection with:

- (a) an Event of Default, the Grantor not complying with any of its obligations under the Finance Documents or a representation, warranty or statement made, or taken to be made, by or on behalf of a Grantor in the Finance Documents being incorrect or misleading (including by omission) when made or taken to be made; or

- (b) the Secured Party exercising, enforcing or preserving rights, powers or remedies in connection with the Finance Documents (or considering doing so); or
- (c) the Collateral (including any indemnity the Secured Party gives a Controller or administrator of the Grantor).

The amounts payable under this clause include any liability or loss and any Costs of the kind referred to in this indemnity incurred by the Secured Party's officers, employees, agents or contractors or any Attorney, and any lessee, purchaser or occupier of any Collateral.

## 8.2 Payment for Grantor's obligations

The Grantor agrees to pay for anything that it agrees to do under this document.

---

## 9 Application of payments

### 9.1 Application of money

At any time after a security interest granted under this deed is enforceable under clause 13.2 ("When enforceable") all money received by the Secured Party, Receiver, Attorney or any other person acting on their behalf under this deed or any Collateral security shall be appropriated and applied in accordance with the Finance Documents.

### 9.2 Money actually received

In applying any money towards satisfaction of the Secured Money, the Grantor is to be credited only with so much of the money which is available for that purpose and which is actually received by the Secured Party, Receiver or Attorney.

### 9.3 Suspense account

- (a) The Secured Party may apply to the credit of a suspense account any:
  - (i) amounts received under this deed;
  - (ii) dividends, distributions or other amounts received in respect of the Secured Money in any liquidation; and
  - (iii) other amounts received from any Obligor or any other person in respect of the Secured Money.
- (b) The Secured Party may place in a suspense account any payment it receives from the Grantor for as long as it considers prudent and need not apply it towards satisfying the Secured Money.

### 9.4 Remaining money

The Secured Party agrees to pay any money remaining after the Secured Party is satisfied in its discretion that the Secured Money has been paid either to the Grantor (which the Secured Party may do by paying it into an account in the Grantor's name) or to another person entitled to it (such as another person with a security interest over the Collateral). In doing so, it does not incur any liability to the Grantor. The Secured Party is not required to pay the Grantor interest on any money remaining after the Secured Money is paid.

### 9.5 Credit from date of receipt

The Grantor is only credited with money from the date the Secured Party actually receives it (including, where the Secured Party has appointed a Receiver, the date the Receiver pays money to the Secured Party).

### 9.6 Secured Party's statement of indebtedness

A certificate signed by any Officer of the Secured Party stating:

- (a) the amount of the Secured Money due and payable; or
- (b) the amount of the Secured Money, whether currently due and payable or not,

is sufficient evidence of that amount as at the date stated on the certificate, or failing that as at the date of the certificate, in the absence of manifest error.

---

## 10 Administrative matters

### 10.1 Deposit of documents

The Grantor agrees to deposit with the Secured Party, promptly upon execution of this deed any documents the Secured Party requests relating to the Collateral.

### 10.2 Registration

The Secured Party may, at the Grantor's expense, apply for any registration, or give any notification, in connection with the security interests created under this deed. This includes registration under the PPSA for whatever collateral class the Secured Party thinks fit. The Grantor consents to any such registration or notification and agrees not to make an amendment demand.

### 10.3 Further steps

- (a) The Grantor agrees, at its own cost, promptly to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which the Secured Party asks and considers necessary to:
  - (i) provide more effective security over the Collateral for payment of the Secured Money including assigning or transferring by way of security to the Secured Party any Collateral;
  - (ii) ensure that this security is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - (iii) aid the exercise of any Power of the Secured Party, Receiver or Attorney;
  - (iv) ensure this security has the priority required by the Secured Party;
  - (v) enable the Secured Party to exercise the Secured Party's rights in connection with the Collateral;
  - (vi) bind the Grantor and any other person intended to be bound under this deed;

- (vii) enable the Secured Party to obtain the consent to this deed of any other person;
  - (viii) enable the Secured Party to register the power of attorney in clause 17 ("Power of attorney") or a similar power; or
  - (ix) show whether the Grantor is complying with the Finance Documents.
- (b) Without limiting clauses 10.3(a)(i) to (ix) (inclusive), if the Secured Party so requests, the Grantor shall execute any other form of security interest which the Secured Party reasonably considers appropriate for the property to be subject to that security, in each case, in form and substance required by the Secured Party.

#### **10.4 Authority to fill in blanks**

The Grantor agrees that the Secured Party may complete and fill in any blanks in this deed or a document connected with it (such as financing statements, financing change statements or transfers of the Collateral).

#### **10.5 Supply of information**

If the Secured Party asks, the Grantor agrees to supply the Secured Party with any information about or documents affecting:

- (a) the Collateral;
- (b) the Finance Documents; or
- (c) the Grantor's financial affairs or business.

---

### **11 Performance of Grantor's Obligations**

While an Event of Default subsists, if at any time the Grantor fails to duly perform any obligation in any Finance Document, the Secured Party or any person it authorises may do anything which in the Secured Party's opinion is necessary or expedient to make good or to attempt to make good that failure to the Secured Party's satisfaction.

---

### **12 Rights the Secured Party may exercise at any time**

#### **12.1 Authority to deal**

Subject to the Facility Agreement, the Secured Party may assign or otherwise deal with its rights under this deed in any way it considers appropriate. If the Secured Party does this, the Grantor may not claim against any assignee (or any other person who has an interest in this deed) any right of set-off or other rights the Grantor has against the Secured Party.

#### **12.2 Secured Party may enter**

If the Secured Party reasonably believes that an Event of Default is, or may be, continuing, the Secured Party may enter land and buildings owned or occupied by the Grantor, any place where the Collateral is located, the Grantor's places of business or its registered office to:

- (a) inspect the Collateral; or

- (b) find out whether the Grantor is complying with this deed; or
- (c) carry out the Secured Party's rights under this deed; or
- (d) inspect and copy records relating to the Grantor or any of its Subsidiaries or the Collateral; or
- (e) investigate the Grantor's financial affairs or business or the financial affairs or businesses of any of its Subsidiaries.

It also agrees to obtain for the Secured Party for these purposes the right to enter land and buildings owned or occupied by the Grantor's Subsidiaries, any place of business of its Subsidiaries, any place where any of its Subsidiaries' property is located or the registered office of any of its Subsidiaries.

The Grantor agrees to help the Secured Party enter, such as by obtaining any necessary consent.

### **12.3 Reasonable notice of entry**

Unless there is an emergency, the Secured Party agrees to give the Grantor reasonable notice before entering under clause 12.2 ("Secured Party may enter").

### **12.4 Right to rectify**

The Secured Party may do anything which the Grantor should have done under this deed or the Finance Documents but which the Grantor either has not done, or in the Secured Party's opinion, has not done properly. If the Secured Party does so, the Grantor agrees to pay the Secured Party's Costs on demand.

### **12.5 Payment of income to Secured Party**

If an Event of Default is continuing and the Secured Party asks, the Grantor agrees to ensure that any income from the Collateral are paid to the Secured Party. If, despite this, they are paid to the Grantor, the Grantor agrees to pay them to the Secured Party. In each case, the Secured Party agrees to use the money it receives as set out in clause 9 ("Application of payments").

### **12.6 Secured Party not mortgagee in possession**

The Secured Party does not become a mortgagee in possession because it exercises its rights under clause 12.2 ("Secured Party may enter"), clause 12.4 ("Right to rectify") or clause 12.5 ("Payment of income to Secured Party").

---

## **13 Default**

### **13.1 Ensure no default**

The Grantor agrees to ensure that no Event of Default occurs.

### **13.2 When enforceable**

If an Event of Default occurs and is continuing, the security interest created by this deed and each Collateral security are immediately enforceable without the need for any demand or notice to be given to the Grantor or any other person.

### 13.3 Investigation of default

If the Secured Party reasonably believes that an Event of Default or Potential Event of Default is, or may be, continuing, the Secured Party may:

- (a) appoint a person to investigate and report to the Secured Party on the affairs, financial condition, assets and business of the Grantor and any of its Subsidiaries;
- (b) inspect the records of the Grantor and any of the Grantor's Subsidiaries and inspect the assets of the Grantor and any of the Grantor's Subsidiaries during normal business hours; and
- (c) conduct all searches and enquiries that person considers appropriate in connection with the Grantor and any of its Subsidiaries and their assets.

The Grantor agrees to co-operate with the person and comply with every reasonable request they make (and ensure that its officers, employees, agents and attorneys do the same). This includes giving them access to all records and assets during normal business hours and giving them any document or other information that they reasonably request. The Grantor agrees to ensure that each Subsidiary (and its officers, employees, agents and attorneys) complies with this clause 13.2.

The Grantor agrees, within 3 Business Days of demand, to pay or reimburse the Secured Party its Costs in connection with the investigation.

### 13.4 Secured Party's powers on default

If an Event of Default is continuing, the Secured Party may do one or more of the following in addition to anything else the law allows the Secured Party to do as a secured party:

- (a) sue the Grantor for the Secured Money;
- (b) appoint one or more Receivers; and/or
- (c) do anything that a Receiver could do under clause 15.5 ("Receiver's powers").

### 13.5 Order of enforcement

The Secured Party may enforce this security before it enforces other rights or remedies:

- (a) against any other person; or
- (b) under another document, such as another Encumbrance.

If the Secured Party has more than one Encumbrance, it may enforce them in any order it chooses.

---

## 14 Statutory powers and notices

### 14.1 Exclusion of PPSA provisions

To the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:

- (i) the Secured Party need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
  - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA, the Secured Party need not comply with sections 132 and 137(3);
- (c) if the PPSA is amended after the date of this deed to permit the Grantor and the Secured Party to agree to not comply with or to exclude other provisions of the PPSA, the Secured Party may notify the Grantor that any of these provisions is excluded, or that the Secured Party need not comply with any of these provisions as notified to the Grantor by the Secured Party; and
- (d) the Grantor agrees not to exercise its rights to make any request of the Secured Party under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

#### **14.2 Exercise of rights by Secured Party**

If the Secured Party exercises a right, power or remedy in connection with this deed, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Secured Party states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

#### **14.3 No notice required unless mandatory**

To the extent the law permits, the Grantor waives:

- (a) its rights to receive any notice that is required by:
  - (i) any provision of the PPSA (including a notice of a verification statement); or
  - (ii) any other law before a secured party or Receiver exercises a right, power or remedy; and
- (b) any time period that must otherwise lapse under any law before a secured party or Receiver exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause prohibits the Secured Party or any Receiver from giving a notice under the PPSA or any other law.

#### **14.4 Appointment of nominee for registration**

For the purposes of section 153 of the PPSA, the Secured Party appoints the Grantor as its nominee, and authorises the Grantor to act on its behalf, in connection with a registration under the PPSA of any security interest in favour of the Grantor which is:

- (a) evidenced or created by chattel paper; and

- (b) perfected by registration under the PPSA; and
- (c) transferred to the Secured Party under this deed.

This authority ceases when the registration is transferred to the Secured Party.

---

## 15 Receivers

### 15.1 Other rights to appoint

In addition to its powers under clause 13.4 ("Secured Party's powers on default"), the Secured Party may appoint a Receiver:

- (a) if the Grantor requests it to do so; and
- (b) to any Collateral in relation to which a Control Event has occurred under paragraph (a)(ii) of the definition of Control Event.

### 15.2 Terms of appointment of Receiver

In exercising its power to appoint a Receiver, the Secured Party may:

- (a) appoint a Receiver to all or any part of the Collateral or its income; and
- (b) set a Receiver's remuneration at any figure the Secured Party determines appropriate, remove a Receiver and appoint a new or additional Receiver.

### 15.3 More than one Receiver

If the Secured Party appoints more than one Receiver, the Secured Party may specify whether they may act individually or jointly.

### 15.4 Receiver is Grantor's agent

Any Receiver appointed under this deed is the Grantor's agent unless the Secured Party notifies the Grantor that the Receiver is to act as the Secured Party's agent. The Grantor is solely responsible for anything done, or not done, by a Receiver and for the Receiver's remuneration and Costs.

### 15.5 Receiver's powers

Unless the terms of appointment restrict a Receiver's powers, the Receiver may do one or more of the following:

- (a) improve the Collateral;
- (b) sell, transfer or otherwise dispose of the Collateral or any interest in it;
- (c) lease or licence the Collateral or any interest in it, or deal with any existing lease or licence (including allowing a surrender or variation);
- (d) take or give up possession of the Collateral as often as it chooses;
- (e) sever, remove and sell fixtures attached to the Collateral;
- (f) obtain registration of the Collateral in the Secured Party's or its nominee's name;

- (g) if the Grantor is not a corporation to which the Corporations Act applies, do anything which the law would allow a Receiver to do if the Grantor was a corporation incorporated (or deemed to be incorporated) under the Corporations Act;
- (h) do anything else the law allows an owner or a Receiver of the Collateral to do.

---

## 16 Disposal of the Collateral is final

The Grantor agrees that if the Secured Party or a Receiver sells or otherwise disposes of the Collateral:

- (a) the Grantor will not challenge the acquirer's right to acquire the Collateral (including on the ground that the Secured Party or the Receiver was not entitled to dispose of the Collateral or that the Grantor did not receive notice of the intended disposal) and the Grantor will not seek to reclaim that property; and
- (b) the person who acquires the Collateral need not check whether the Secured Party or the Receiver has the right to dispose of the Collateral or whether the Secured Party or the Receiver exercises that right properly.

---

## 17 Power of attorney

### 17.1 Appointment

The Grantor irrevocably appoints the Secured Party, each Authorised Officer of the Secured Party, and each Receiver individually as the Grantor's attorney and agrees to ratify anything an Attorney does under clause 17.2 ("Powers").

### 17.2 Powers

If an Event of Default is continuing, an Attorney may:

- (a) do anything which the Grantor can lawfully authorise an attorney to do in connection with any Finance Document or the Collateral or which the Attorney believes is expedient to give effect to any of the Secured Party's or a Receiver's rights, powers or remedies in connection with any Finance Document or at law (these things may be done in the Grantor's name or the Attorney's name, and they include signing and delivering documents, transferring, selling or leasing the Collateral, transferring, selling or surrendering any lease, lodging or withdrawing caveats, starting, conducting and defending legal proceedings, and sending any instructions, messages or communications by which the Collateral can be transferred or otherwise dealt with);
- (b) delegate their powers (including this power) and revoke a delegation; and
- (c) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.

## 18 Reinstatement of rights

Under law relating to Insolvency, a person may claim that a transaction (including a payment) in connection with the Secured Money is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) the Secured Party is immediately entitled as against the Grantor to the rights in respect of the Secured Money to which it was entitled immediately before the transaction; and
- (b) on request from the Secured Party, the Grantor agrees to do anything (including signing any document) to restore to the Secured Party any Encumbrance (including this security) it held from the Grantor immediately before the transaction.

---

## 19 Notices and other

All notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be given in accordance with clause 30 ("Notices") of the Facility Agreement.

---

## 20 General

### 20.1 Prompt performance

If this deed specifies when a party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all of its other obligations promptly. Time is of the essence in this deed in respect of an obligation of the Grantor to pay money.

### 20.2 Certificates

The Secured Party may give the Grantor a certificate about the amount of the Secured Money or another amount payable or other matter in connection with this deed or the Finance Documents. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

### 20.3 Discretion in exercising rights

The Secured Party or a Receiver may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this deed in its absolute discretion (including by imposing conditions).

### 20.4 Partial exercising of rights

If the Secured Party or a Receiver does not exercise a right, power or remedy in connection with this deed fully or at a given time, the Secured Party or Receiver may still exercise it later.

### 20.5 Conditions of consents, approvals or waivers

The Grantor agrees to comply with all conditions in any consent, approval or waiver given in connection with this deed.

### 20.6 No liability for loss

Neither the Secured Party nor a Receiver or other person appointed by them under this deed is liable for any loss, liability or Costs arising in connection with

the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this deed.

#### **20.7 Conflict of interest**

The Secured Party and a Receiver may exercise their rights, powers and remedies in connection with this deed even if this involves a conflict of interest or the Secured Party or Receiver has a personal interest in their exercise.

#### **20.8 Secured Party or Receiver in possession**

If the Secured Party exercises any right, power or remedy in connection with this deed or at law to enter or take possession of the Collateral, it:

- (a) has complete and unfettered discretion as to how the Collateral is managed; and
- (b) is liable to account only for rents and profits actually received by it.

The same applies to any Receiver when acting as agent of the Secured Party.

#### **20.9 Remedies cumulative**

The rights, powers and remedies of the Secured Party or a Receiver in connection with this deed are in addition to other rights, powers and remedies given in any other document or by law independently of this deed.

#### **20.10 Other Encumbrances or judgments**

This deed does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any Encumbrance or other right, power or remedy to which the Secured Party is entitled; or
- (b) a judgment which the Secured Party obtains against the Grantor in connection with the Secured Money.

The Secured Party may still exercise its rights, powers or remedies under this deed as well as under the judgment, other Encumbrance or the right, power or remedy.

#### **20.11 Continuing security**

This security is a continuing security despite any intervening payment, settlement or other thing until the Secured Party releases all of the Collateral from the security interest.

#### **20.12 Indemnities and reimbursement obligations**

Any indemnity, reimbursement, payment or similar obligation in this deed given by the Grantor:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this deed, any settlement or any other thing; and
- (b) is independent of the Grantor's other obligations under this deed or any other document; and

- (c) continues after this deed, or any obligation arising under it, ends.

It is not necessary for the Secured Party to incur expense or make payment before enforcing a right of indemnity in connection with this deed.

### **20.13 Rights and obligations are unaffected**

The Secured Party's or a Receiver's rights, powers and remedies and the Grantor's obligations in connection with this deed are not affected by anything which might otherwise affect them at law.

### **20.14 Supervening law**

Any present or future law which operates to vary the obligations of the Grantor in connection with this deed with the result that the Secured Party's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### **20.15 Variation and waiver**

- (a) A provision of this deed, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party or parties to be bound.
- (a) No failure to exercise and no delay in exercising a Power operates as a waiver, nor does any single or partial exercise of a Power preclude any other or further exercise of that or any other Power.
- (b) Powers in the Finance Documents are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

### **20.16 Severability of provisions**

If:

- (a) a law would otherwise make a provision of this deed illegal, void or unenforceable; or
- (b) a provision of this deed would otherwise contravene a requirement of a law or impose an obligation or liability which is prohibited by law,

this deed is to be read as if that provision were varied to the extent necessary to comply with that law or, if necessary, omitted.

### **20.17 Receipts**

The receipt of a Receiver, the Secured Party or an Authorised Officer of the Secured Party releases the person paying money to the Receiver or the Secured Party in connection with this deed from:

- (a) liability to enquire whether the Secured Money has become payable; and
- (b) liability for the money paid or expressed to be received; and
- (c) being concerned to see to its application or being answerable or accountable for its loss or misapplication.

# General Security Agreement

## Signing page

### Grantor

**EXECUTED** by **LIBERTY BELL BAY**  
(**ABN 23 004 456 035**) in accordance  
with section 127(1) of the *Corporations*  
*Act 2001* (Cth);

Out of Scope

Signature of director

IAIN HUNTER

Name of director (block letters)

Out of Scope

Signature of director/company  
secretary

SANDIP BISWAS

Name of director/company secretary  
(block letters)

### Secured Party

**EXECUTED** as a deed for and on behalf of the State of Tasmania by The Honourable  
Felix Ashton Ellis MP (being and as the Minister for the time being administering the  
*Tasmanian Development Act 1983* (Tas)) in the presence of the witness named below:

Minister's  
signature:

→

Out of Scope

Witness'  
signature:

→

Out of Scope

\*Witness  
print  
name:

Adam Foster

\*Use BLOCK LETTERS

\*Witness  
print  
address:

Lvl 5, 4 Salamanca Place  
Hobart TAS

#### 20.18 Each signatory bound

This deed binds each person who signs as Grantor even if another person who was intended to sign does not sign it or is not bound by it.

#### 20.19 Moratorium Legislation

To the full extent permitted by law, all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of the Grantor any obligation under a Finance Document; or
- (b) delays, prevents or prejudicially affects the exercise by the Secured Party, Receiver or Attorney of any Power,

is excluded from the Finance Document.

#### 20.20 Counterparts

This deed may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document.

#### 20.21 Governing law and jurisdiction

- (a) The law in force in Victoria governs this deed. The parties to this deed submit to the non-exclusive jurisdiction of the courts of that place (including in respect of a dispute relating to the existence, validity or termination of this deed (a **Dispute**). To the extent permitted by law, the law of the Commonwealth as it applies in that jurisdiction governs this security.
- (b) The parties to this deed agree that those courts are the most appropriate and convenient courts to settle Disputes and accordingly no such party will argue to the contrary.

#### 20.22 Serving documents

Without preventing any other method of service any document in an action in connection with this deed may be served on a party by being delivered or left at that party's address for service of notices under clause 30.3 ("*Delivery*") of the Facility Agreement.

EXECUTED as a deed

# Specific Security Agreement

Dated 18 August 2025

Liberty Bell Bay Pty Ltd (ABN 23 004 456 035) ("**Grantor**")

The State of Tasmania (acting through the Minister administering the *Tasmanian Development Act 1983* (Tas) and represented by the Department of State Growth ("**Secured Party**")

**King & Wood Mallesons**  
Level 27  
Collins Arch  
447 Collins Street  
Melbourne VIC 3000  
Australia  
T +61 3 9643 4000  
www.kwm.com

# Specific Security Agreement

## Contents

<b>Details</b>	<b>1</b>
<b>General terms</b>	<b>2</b>
<b>1 Definitions and interpretation</b>	<b>2</b>
1.1 Terms defined in the Facility Agreement	2
1.2 Definitions	2
1.3 General interpretation	5
1.4 Finance Document	6
<b>2 Grantor must pay the Secured Money</b>	<b>6</b>
<b>3 Security</b>	<b>6</b>
3.1 Security interest	6
3.2 PMSI	7
3.3 Priority	7
3.4 Mandatory action	7
3.5 Consideration	7
3.6 Variations and replacements	7
3.7 Disposed property and proceeds	7
<b>4 Dealings with Collateral</b>	<b>8</b>
4.1 Restricted dealings	8
4.2 Where the law allows for creation of Encumbrance without consent	9
<b>5 Undertakings</b>	<b>9</b>
5.1 General undertakings	9
5.2 Representations and warranties	9
5.3 Times for making representations and warranties	10
<b>6 Payments</b>	<b>10</b>
6.1 Manner of payment	10
6.2 Amounts payable on demand	10
<b>7 Indemnities</b>	<b>10</b>
7.1 Indemnity	10
7.2 Payment for Grantor's obligations	11
<b>8 Application of payments</b>	<b>11</b>
8.1 Application of money	11
8.2 Money actually received	11
8.3 Suspense account	11
8.4 Remaining money	11
8.5 Credit from date of receipt	12
8.6 Secured Party's statement of indebtedness	12

<b>9</b>	<b>Administrative matters</b>	<b>12</b>
9.1	Deposit of documents	12
9.2	Registration	12
9.3	Further steps	12
9.4	Authority to fill in blanks	13
9.5	Supply of information	13
<b>10</b>	<b>Performance of Grantor's Obligations</b>	<b>13</b>
<b>11</b>	<b>Rights the Secured Party may exercise at any time</b>	<b>13</b>
11.1	Authority to deal	13
11.2	Secured Party may enter	13
11.3	Reasonable notice of entry	14
11.4	Right to rectify	14
11.5	Payment of income to Secured Party	14
11.6	Secured Party not mortgagee in possession	14
<b>12</b>	<b>Default</b>	<b>14</b>
12.1	Ensure no default	14
12.2	When enforceable	14
12.3	Investigation of default	15
12.4	Secured Party's powers on default	15
12.5	Order of enforcement	15
<b>13</b>	<b>Statutory powers and notices</b>	<b>15</b>
13.1	Exclusion of PPSA provisions	15
13.2	Exercise of rights by Secured Party	16
13.3	No notice required unless mandatory	16
13.4	Appointment of nominee for registration	16
<b>14</b>	<b>Receivers</b>	<b>17</b>
14.1	Other rights to appoint	17
14.2	Terms of appointment of Receiver	17
14.3	More than one Receiver	17
14.4	Receiver is Grantor's agent	17
14.5	Receiver's powers	17
<b>15</b>	<b>Disposal of the Collateral is final</b>	<b>18</b>
<b>16</b>	<b>Power of attorney</b>	<b>18</b>
16.1	Appointment	18
16.2	Powers	18
<b>17</b>	<b>Reinstatement of rights</b>	<b>18</b>
<b>18</b>	<b>Notices and other</b>	<b>19</b>
<b>19</b>	<b>General</b>	<b>19</b>
19.1	Prompt performance	19
19.2	Certificates	19
19.3	Discretion in exercising rights	19
19.4	Partial exercising of rights	19

19.5	Conditions of consents, approvals or waivers	19
19.6	No liability for loss	19
19.7	Conflict of interest	19
19.8	Secured Party or Receiver in possession	20
19.9	Remedies cumulative	20
19.10	Other Encumbrances or judgments	20
19.11	Continuing security	20
19.12	Indemnities and reimbursement obligations	20
19.13	Rights and obligations are unaffected	20
19.14	Supervening law	21
19.15	Variation and waiver	21
19.16	Severability of provisions	21
19.17	Receipts	21
19.18	Each signatory bound	21
19.19	Moratorium Legislation	21
19.20	Counterparts	22
19.21	Governing law and jurisdiction	22
19.22	Serving documents	22
	<b>Signing page</b>	<b>23</b>

Released under RTI

# Specific Security Agreement

## Details

Date

Parties Grantor and Secured Party

---

<b>Grantor</b>	Name	Liberty Bell Bay Pty Ltd
	ABN	23 004 456 035
	Email	Out of Scope
	Attention	Executive General Manager – Liberty Bell Bay Company Secretary

---

<b>Secured Party</b>	Name	The State of Tasmania (acting through the Minister administering the <i>Tasmanian Development Act 1983</i> (Tas) and represented by the Department of State Growth
	Address	C/- Department of State Growth 4 Salamanca Place Hobart, Tasmania 7000
	Facsimile	(03) 6173 0287
	Email	secretary@stategrowth.tas.gov.au
	Attention	Secretary, Department of State Growth

---

# Specific Security Agreement

## General terms

---

### 1 Definitions and interpretation

#### 1.1 Terms defined in the Facility Agreement

A term which has a defined meaning in the Facility Agreement has the same meaning when used in this deed unless it is expressly defined in this deed, in which case the meaning in this deed applies.

#### 1.2 Definitions

Unless the contrary intention appears, these meanings apply:

**Attorney** means each attorney appointed by the Grantor under clause 17 ("Power of attorney").

**Authorised Officer** means:

- (a) in the case of the Secured Party, each Secretary, Acting Secretary and Deputy Secretary of the Department, and a nominee of any of them; and
- (b) in the case of the Grantor, any director or company secretary, or any person from time to time nominated as an Authorised Officer by it by a notice to the Secured Party accompanied by certified copies of signatures of all new persons so appointed.

**Collateral** means all the Grantor's rights under or in relation to the South32 Contract and any property or other thing (including ore) subject to the South32 Contract or delivered under the South32 Contract in respect of which the Grantor has at any time a sufficient right, interest or power to grant a security interest.

**Collection Account** means any account opened with an authorised deposit-taking institution, in the name of the Grantor, designated by the Secured Party as the collection account for the purposes of this deed. If there is a change of authorised deposit-taking institution at which the relevant account is held, it includes any account into which money credited to the Collection Account is transferred.

**Controller** has the meaning it has in 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.

**Department** means the department representing the Crown that is responsible for the administration of this Agreement, or any department that substantially succeeds to its functions.

**Details** means the section of this deed headed "Details".

**Encumbrance** means any:

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

**Facility Agreement** means the Facility Agreement dated 2025 between the Grantor and the Secured Party.

**Finance Documents** has the meaning it has in the Facility Agreement.

**Government Body** includes a body politic, a government (federal, state or local), a governmental, judicial or administrative body, a tribunal, a commission, a department or agency of any government, and a statutory authority or instrumentality.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Secured Party); or
- (d) an application or order has been made (and, in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, in respect of any of the above paragraphs; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Secured Party reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or

- (h) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.

**Minister** means the Minister administering the *Tasmanian Development Act 1983* (Tas).

**PMSI** means a purchase money security interest as defined in the PPSA.

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

**Receiver** includes a receiver or receiver and manager.

**Related Entity** has the meaning it has in the Corporations Act.

**Secured Money** means all money which the Grantor (whether alone or not) is or at any time may become actually or contingently liable to pay to or for the account of the Secured Party (whether alone or not) for any reason under or in connection with the Finance Documents and whether or not ascertained or currently contemplated.

It includes money (including as a result of a breach or default) by way of principal, interest, fees, costs, indemnities, guarantees, charges, duties, expenses, liquidated or unliquidated damages, and any amount paid or advanced by the Secured Party to protect or maintain any Collateral or any security interest in this deed or for which the Secured Party is liable by reason of any act or omission of the Grantor.

Where the Grantor would have been liable but for its deregistration, or a compromise, deed of arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors or bankruptcy (or any analogous process in any jurisdiction) or a set-off claimed by it, or some other reason, it will be taken still to be liable.

This definition applies:

- (a) whether the liability arises under law or otherwise;
- (b) irrespective of the capacity (whether or not disclosed) in which the Grantor or the Secured Party is or may become entitled or liable;
- (c) whether the Grantor or the Secured Party is liable as principal debtor, surety or otherwise;
- (d) where the liability may become owing on the occurrence of a future event, whether or not it arises from an existing obligation;
- (e) even if a liability to or for the account of the Secured Party, or a Finance Document:
  - (i) is or was assigned or transferred to the Secured Party before on or after the date of this deed, with or without consent; or
  - (ii) was previously secured or not.

**South32 Contract** means the contract for the sale of the Primary Ore by South32 to the Grantor dated on or about the date of this Deed.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or assessed as being payable by any authority together with any fines, penalties and interest in connection with them.

### 1.3 General interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears in this deed:

- (a) labels used for definitions are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (d) a reference to a document also includes any variation, replacement or novation of it;
- (e) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions;
- (f) a reference to "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority, a Government Body or any other entity or organisation;
- (g) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) a reference to a time of day is a reference to Melbourne time;
- (i) a reference to, dollars, \$ or A\$ is a reference to the currency of Australia;
- (j) a reference to "**law**" includes common law, principles of equity and legislation (including regulations);
- (k) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to "**regulations**" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (m) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- (n) a reference to a group of persons is a reference to any 2 or more of them jointly and severally;
- (o) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (p) a reference to accounting standards is a reference to accounting standards, principles and practices generally accepted in the relevant place, consistently applied;

- (q) a reference to an accounting term in an accounting context is a reference to that term as it is used in relevant accounting standards;
- (r) a reference to “**property**” or “**asset**” includes any present or future, real or personal, tangible or intangible property, asset or undertaking and any right, interest or benefit under or arising from it;
- (s) an Event of Default is “continuing” if it has occurred and has not been waived in writing by, or remedied to the satisfaction of, the Secured Party;
- (t) a reference to “**control**” includes control as defined in the PPSA;
- (u) a reference to “**possession**” includes possession as defined in the PPSA;
- (v) a reference to “**this security**” means the security interests created by this deed;
- (w) a reference to a Minister includes, as applicable, that Minister's predecessors and successors in office;
- (x) a reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or functions of which have been substantially transferred, is taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred;
- (y) a reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office.

#### **1.4 Finance Document**

This deed is a ‘Finance Document’ for the purposes of the Facility Agreement.

---

## **2 Grantor must pay the Secured Money**

The Grantor agrees to pay the Secured Money in accordance with the terms of the Finance Documents.

---

## **3 Security**

### **3.1 Security interest**

- (a) The Grantor grants a security interest in the Collateral to the Secured Party to secure payment of the Secured Money.
- (b) This security interest is a charge.
- (c) The Grantor does this as absolute or beneficial owner.

### 3.2 PMSI

The parties intend that the security interest created under clause 3.1 is a PMSI. However, if it is not a PMSI, then the security interest will operate as a non-PMSI security interest.

### 3.3 Priority

- (a) Each party intends the security interest granted under this deed to take priority over all other security interests over the Collateral of the Grantor, except for any security interests which are mandatorily preferred by any applicable law.
- (b) Nothing in this deed will be construed as an agreement by the Secured Party to subordinate the security interests created under this deed to any other security interest in the Secured Property at any time.

### 3.4 Mandatory action

To the extent that any legislation requires that something must be done (such as obtaining consent) before the Grantor may validly grant a security interest in any of the Collateral, the security interest under clause 3.1 ("Security interest") only takes effect in relation to that Collateral when the thing required is done. The Grantor agrees to do everything necessary to ensure that it is done.

### 3.5 Consideration

The Grantor acknowledges granting this security and incurring obligations and giving rights under this deed for valuable consideration.

### 3.6 Variations and replacements

- (a) The Grantor acknowledges that the Finance Documents may be varied or replaced from time to time.
- (b) The Grantor confirms that the Secured Money includes any amount payable under any Finance Document as varied or replaced. The Grantor confirms that this applies regardless of:
  - (i) how the Finance Document is varied or replaced; and
  - (ii) the reasons for the variation or replacement; and
  - (iii) whether the Secured Money decreases or increases or the Finance Document is otherwise more onerous as a result of the variation or replacement.

### 3.7 Disposed property and proceeds

- (a) If any Collateral is dealt with (whether or not that dealing is authorised by the Secured Party), the security interests created by this deed remain attached to that Collateral and are not released or extinguished unless:
  - (i) the dealing is an absolute transfer of all of the Grantor's rights, title and interests in that Collateral which is expressly permitted or not otherwise prohibited by the Finance Documents; or
  - (ii) the Secured Party has expressly authorised the release of the security interest over the Collateral.

- (b) If the Grantor enters into a Sales Contract which is consistent with a Sales Strategy approved under clause 8(b) of Schedule 11 the Facility Agreement, any Security Interest attached to Collateral disposed of under that Sales Contract will be released upon the receipt by the Grantor of all amounts owing to the Grantor under that Sales Contract.
- (c) The Secured Party must provide written confirmation of the release of any Security Interest released under clause 3.7(b) at the request of the Grantor.

If any Collateral gives rise to proceeds (by being dealt with or otherwise), the security interest under this deed attaches to the proceeds.

---

## **4 Discharge of the Security**

### **4.1 Discharge**

Subject to clause 4.2 ("Final discharge"), at the written request and cost of the Grantor, the Secured Party must discharge the Security Interests created under this deed if:

- (a) in the Secured Party's opinion, the Secured Money has been finally paid; and
- (b) the Grantor has fully discharged its obligations under this deed and each other Finance Document.

### **4.2 Final discharge**

- (a) The Secured Party is not obliged to discharge the Security Interests under clause 4.1 ("Discharge") if, at the time the requirements of clause 4.1 ("Discharge") are satisfied, the Secured Party is of the opinion that:
  - (i) the Grantor owes further Secured Money contingently or otherwise to the Secured Party; or
  - (ii) the Grantor will owe further Secured Money to the Secured Party within a reasonable time after the date the Grantor requests the discharge of the Security Interests.
- (b) Clause 4.2(a) ("Final discharge") overrides any other clause to the contrary in this deed.

---

## **5 Dealings with Collateral**

### **5.1 Restricted dealings**

The Grantor must not do, or agree to do, any of the following unless it is expressly permitted or not otherwise prohibited by the Finance Documents:

- (a) create or allow another security interest in any Collateral; or
- (b) dispose, or part with possession, of any Collateral.

## 5.2 Where the law allows for creation of Encumbrance without consent

If a law entitles the Grantor to create another Encumbrance over the Collateral without the consent of the Secured Party, this clause 3.7 does not operate to require the Grantor to obtain the Secured Party's consent before creating that other Encumbrance.

However, if the Grantor intends to create another Encumbrance, it agrees to notify the Secured Party at least seven days before it proposes to do so.

---

## 6 Undertakings

### 6.1 General undertakings

The Grantor agrees:

- (a) **(provision of information)** to provide to the Secured Party any information which the Secured Party reasonably requests in relation to the Grantor or any of its assets;
- (b) **(change of Grantor details)** to notify the Secured Party at least 14 days before:
  - (i) the Grantor changes its name as recorded in a public register in its jurisdiction of incorporation or in its constituent documents;
  - (ii) any ACN or ARBN allocated to the Grantor 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); and
  - (iii) the Grantor becomes trustee of a trust, or a partner in a partnership, not stated in the Details; and
- (c) **(PPSA dates)** to notify the Secured Party as soon as it becomes aware of any dates in a registration on the PPSA with respect to the Collateral being or becoming incorrect.

### 6.2 Representations and warranties

- (a) The Grantor represents and warrants to the Secured Party for the benefit of the Secured Party that:
  - (i) it is the legal owner of, and has good title to all of its Collateral and has the right to grant the security interests over its Collateral in the manner contemplated by this deed;
  - (ii) it has disclosed to the Secured Party all material information relating to it, this deed and anything in connection with them reasonably requested by the Secured Party in relation to making any registration on the PPSR or giving any notification in connection with any security interest created by this deed; and
  - (iii) subject to any necessary stamping and registration requirements, this deed creates the security interest which it is expressed to create.
- (b) The Grantor acknowledges that:
  - (i) the representations and warranties provided in this deed:

- (A) have been relied upon by the Secured Party in entering into the security to which it is a party; and
  - (B) survive the execution and delivery of the security and the provision of financial accommodation under these documents; and
- (ii) it has not entered into this deed or any other security on any representation, warranty, assurance, undertaking or statement of the Secured Party or of any person on behalf of the Secured Party.

### **6.3 Times for making representations and warranties**

- (a) The representations and warranties set out in this deed are made on the date of this deed.
- (b) Unless a representation and warranty is expressed to be given on a specific date, each representation and warranty under this deed is deemed to be repeated by the Grantor on each date which is specified under a Finance Document as a day on which representations and warranties are repeated or deemed to be repeated, and if no such date for repetition is specified, on the last date of each calendar quarter.
- (c) When a representation and warranty is repeated, it is repeated by reference to the circumstances existing at the time of repetition.

---

## **7 Payments**

### **7.1 Manner of payment**

The Grantor must make payments (including by way of reimbursement) under this deed:

- (a) in full without set-off or counterclaim, and without any deduction or withholding in respect of Taxes unless prohibited by law; and
- (b) if the payment relates to the Secured Money, in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

### **7.2 Amounts payable on demand**

If an amount payable under a Finance Document is not expressed to be payable on a specified date, that amount is payable by the Grantor on demand by the Secured Party.

---

## **8 Indemnities**

### **8.1 Indemnity**

The Grantor agrees, within 3 Business Days of demand, to indemnify the Secured Party against, and to reimburse and compensate it for, any liability or loss arising from, and any Costs incurred in connection with:

- (a) an Event of Default, the Grantor not complying with any of its obligations under this document or a representation, warranty or statement made, or taken to be made, by or on behalf of a Grantor in this document being

incorrect or misleading (including by omission) when made or taken to be made; or

- (b) the Secured Party exercising, enforcing or preserving rights, powers or remedies in connection with this document (or considering doing so); or
- (c) the Collateral (including any indemnity the Secured Party gives a Controller or administrator of the Grantor).

The amounts payable under this clause include any liability or loss and any Costs of the kind referred to in this indemnity incurred by the Secured Party's officers, employees, agents or contractors or any Attorney, and any lessee, purchaser or occupier of any Collateral.

## **8.2 Payment for Grantor's obligations**

The Grantor agrees to pay for anything that it agrees to do under this document.

---

## **9 Application of payments**

### **9.1 Application of money**

At any time after a security interest granted under this deed is enforceable under clause 13.2 ("When enforceable") all money received by the Secured Party, Receiver, Attorney or any other person acting on their behalf under this deed or any Collateral security shall be appropriated and applied in accordance with the Finance Documents.

### **9.2 Money actually received**

In applying any money towards satisfaction of the Secured Money, the Grantor is to be credited only with so much of the money which is available for that purpose and which is actually received by the Secured Party, Receiver or Attorney.

### **9.3 Suspense account**

- (a) The Secured Party may apply to the credit of a suspense account any:
  - (i) amounts received under this deed;
  - (ii) dividends, distributions or other amounts received in respect of the Secured Money in any liquidation; and
  - (iii) other amounts received from any Obligor or any other person in respect of the Secured Money.
- (b) The Secured Party may place in a suspense account any payment it receives from the Grantor for as long as it considers prudent and need not apply it towards satisfying the Secured Money.

### **9.4 Remaining money**

The Secured Party agrees to pay any money remaining after the Secured Party is satisfied in its discretion that the Secured Money has been paid either to the Grantor (which the Secured Party may do by paying it into an account in the Grantor's name) or to another person entitled to it (such as another person with a security interest over the Collateral). In doing so, it does not incur any liability to the Grantor. The Secured Party is not required to pay the Grantor interest on any money remaining after the Secured Money is paid.

### **9.5 Credit from date of receipt**

The Grantor is only credited with money from the date the Secured Party actually receives it (including, where the Secured Party has appointed a Receiver, the date the Receiver pays money to the Secured Party).

### **9.6 Secured Party's statement of indebtedness**

A certificate signed by any Officer of the Secured Party stating:

- (a) the amount of the Secured Money due and payable; or
- (b) the amount of the Secured Money, whether currently due and payable or not,

is sufficient evidence of that amount as at the date stated on the certificate, or failing that as at the date of the certificate, in the absence of manifest error.

---

## **10 Administrative matters**

### **10.1 Deposit of documents**

The Grantor agrees to deposit with the Secured Party, promptly upon execution of this deed any documents the Secured Party requests relating to the Collateral.

### **10.2 Registration**

The Secured Party may, at the Grantor's expense, apply for any registration, or give any notification, in connection with the security interests created under this deed. This includes registration under the PPSA for whatever collateral class the Secured Party thinks fit. The Grantor consents to any such registration or notification and agrees not to make an amendment demand.

### **10.3 Further steps**

- (a) The Grantor agrees, at its own cost, promptly to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which the Secured Party asks and considers necessary to:
  - (i) provide more effective security over the Collateral for payment of the Secured Money including assigning or transferring by way of security to the Secured Party any Collateral;
  - (ii) ensure that this security is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - (iii) aid the exercise of any Power of the Secured Party, Receiver or Attorney;
  - (iv) ensure this security has the priority required by the Secured Party;
  - (v) enable the Secured Party to exercise the Secured Party's rights in connection with the Collateral;
  - (vi) bind the Grantor and any other person intended to be bound under this deed;

- (vii) enable the Secured Party to obtain the consent to this deed of any other person;
  - (viii) enable the Secured Party to register the power of attorney in clause 17 ("Power of attorney") or a similar power; or
  - (ix) show whether the Grantor is complying with the Finance Documents.
- (b) Without limiting clauses 10.3(a)(i) to (ix) (inclusive), if the Secured Party so requests, the Grantor shall execute any other form of security interest which the Secured Party reasonably considers appropriate for the property to be subject to that security, in each case, in form and substance required by the Secured Party.

#### **10.4 Authority to fill in blanks**

The Grantor agrees that the Secured Party may complete and fill in any blanks in this deed or a document connected with it (such as financing statements, financing change statements or transfers of the Collateral).

#### **10.5 Supply of information**

If the Secured Party asks, the Grantor agrees to supply the Secured Party with any information about or documents affecting:

- (a) the Collateral;
- (b) the Finance Documents; or
- (c) the Grantor's financial affairs or business.

---

### **11 Performance of Grantor's Obligations**

While an Event of Default subsists, if at any time the Grantor fails to duly perform any obligation in any Finance Document, the Secured Party or any person it authorises may do anything which in the Secured Party's opinion is necessary or expedient to make good or to attempt to make good that failure to the Secured Party's satisfaction.

---

### **12 Rights the Secured Party may exercise at any time**

#### **12.1 Authority to deal**

Subject to the Facility Agreement, the Secured Party may assign or otherwise deal with its rights under this deed in any way it considers appropriate. If the Secured Party does this, the Grantor may not claim against any assignee (or any other person who has an interest in this deed) any right of set-off or other rights the Grantor has against the Secured Party.

#### **12.2 Secured Party may enter**

If the Secured Party reasonably believes that an Event of Default is, or may be, continuing, the Secured Party may enter land and buildings owned or occupied by the Grantor, any place where the Collateral is located, the Grantor's places of business or its registered office to:

- (a) inspect the Collateral; or

- (b) find out whether the Grantor is complying with this deed; or
- (c) carry out the Secured Party's rights under this deed; or
- (d) inspect and copy records relating to the Grantor or any of its Subsidiaries or the Collateral; or
- (e) investigate the Grantor's financial affairs or business or the financial affairs or businesses of any of its Subsidiaries.

It also agrees to obtain for the Secured Party for these purposes the right to enter land and buildings owned or occupied by the Grantor's Subsidiaries, any place of business of its Subsidiaries, any place where any of its Subsidiaries' property is located or the registered office of any of its Subsidiaries.

The Grantor agrees to help the Secured Party enter, such as by obtaining any necessary consent.

### **12.3 Reasonable notice of entry**

Unless there is an emergency, the Secured Party agrees to give the Grantor reasonable notice before entering under clause 12.2 ("Secured Party may enter").

### **12.4 Right to rectify**

The Secured Party may do anything which the Grantor should have done under this deed or the Finance Documents but which the Grantor either has not done, or in the Secured Party's opinion, has not done properly. If the Secured Party does so, the Grantor agrees to pay the Secured Party's Costs on demand.

### **12.5 Payment of income to Secured Party**

If an Event of Default is continuing and the Secured Party asks, the Grantor agrees to ensure that any income from the Collateral are paid to the Secured Party. If, despite this, they are paid to the Grantor, the Grantor agrees to pay them to the Secured Party. In each case, the Secured Party agrees to use the money it receives as set out in clause 9 ("Application of payments").

### **12.6 Secured Party not mortgagee in possession**

The Secured Party does not become a mortgagee in possession because it exercises its rights under clause 12.2 ("Secured Party may enter"), clause 12.4 ("Right to rectify") or clause 12.5 ("Payment of income to Secured Party").

---

## **13 Default**

### **13.1 Ensure no default**

The Grantor agrees to ensure that no Event of Default occurs.

### **13.2 When enforceable**

If an Event of Default occurs and is continuing, the security interest created by this deed and each Collateral security are immediately enforceable without the need for any demand or notice to be given to the Grantor or any other person.

### 13.3 Investigation of default

If the Secured Party reasonably believes that an Event of Default or Potential Event of Default is, or may be, continuing, the Secured Party may:

- (a) appoint a person to investigate and report to the Secured Party on the affairs, financial condition, assets and business of the Grantor and any of its Subsidiaries;
- (b) inspect the records of the Grantor and any of the Grantor's Subsidiaries and inspect the assets of the Grantor and any of the Grantor's Subsidiaries during normal business hours; and
- (c) conduct all searches and enquiries that person considers appropriate in connection with the Grantor and any of its Subsidiaries and their assets.

The Grantor agrees to co-operate with the person and comply with every reasonable request they make (and ensure that its officers, employees, agents and attorneys do the same). This includes giving them access to all records and assets during normal business hours and giving them any document or other information that they reasonably request. The Grantor agrees to ensure that each Subsidiary (and its officers, employees, agents and attorneys) complies with this clause 13.2.

The Grantor agrees, within 3 Business Days of demand, to pay or reimburse the Secured Party its Costs in connection with the investigation.

### 13.4 Secured Party's powers on default

If an Event of Default is continuing, the Secured Party may do one or more of the following in addition to anything else the law allows the Secured Party to do as a secured party:

- (a) sue the Grantor for the Secured Money;
- (b) appoint one or more Receivers; and/or
- (c) do anything that a Receiver could do under clause 15.5 ("Receiver's powers").

### 13.5 Order of enforcement

The Secured Party may enforce this security before it enforces other rights or remedies:

- (a) against any other person; or
- (b) under another document, such as another Encumbrance.

If the Secured Party has more than one Encumbrance, it may enforce them in any order it chooses.

---

## 14 Statutory powers and notices

### 14.1 Exclusion of PPSA provisions

To the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:

- (i) the Secured Party need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
  - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA, the Secured Party need not comply with sections 132 and 137(3);
- (c) if the PPSA is amended after the date of this deed to permit the Grantor and the Secured Party to agree to not comply with or to exclude other provisions of the PPSA, the Secured Party may notify the Grantor that any of these provisions is excluded, or that the Secured Party need not comply with any of these provisions as notified to the Grantor by the Secured Party; and
- (d) the Grantor agrees not to exercise its rights to make any request of the Secured Party under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

#### **14.2 Exercise of rights by Secured Party**

If the Secured Party exercises a right, power or remedy in connection with this deed, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Secured Party states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

#### **14.3 No notice required unless mandatory**

To the extent the law permits, the Grantor waives:

- (a) its rights to receive any notice that is required by:
  - (i) any provision of the PPSA (including a notice of a verification statement); or
  - (ii) any other law before a secured party or Receiver exercises a right, power or remedy; and
- (b) any time period that must otherwise lapse under any law before a secured party or Receiver exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause prohibits the Secured Party or any Receiver from giving a notice under the PPSA or any other law.

#### **14.4 Appointment of nominee for registration**

For the purposes of section 153 of the PPSA, the Secured Party appoints the Grantor as its nominee, and authorises the Grantor to act on its behalf, in connection with a registration under the PPSA of any security interest in favour of the Grantor which is:

- (a) evidenced or created by chattel paper; and

- (b) perfected by registration under the PPSA; and
- (c) transferred to the Secured Party under this deed.

This authority ceases when the registration is transferred to the Secured Party.

---

## **15 Receivers**

### **15.1 Other rights to appoint**

In addition to its powers under clause 13.4 ("Secured Party's powers on default"), the Secured Party may appoint a Receiver if the Grantor requests it to do so.

### **15.2 Terms of appointment of Receiver**

In exercising its power to appoint a Receiver, the Secured Party may:

- (a) appoint a Receiver to all or any part of the Collateral or its income; and
- (b) set a Receiver's remuneration at any figure the Secured Party determines appropriate, remove a Receiver and appoint a new or additional Receiver.

### **15.3 More than one Receiver**

If the Secured Party appoints more than one Receiver, the Secured Party may specify whether they may act individually or jointly.

### **15.4 Receiver is Grantor's agent**

Any Receiver appointed under this deed is the Grantor's agent unless the Secured Party notifies the Grantor that the Receiver is to act as the Secured Party's agent. The Grantor is solely responsible for anything done, or not done, by a Receiver and for the Receiver's remuneration and Costs.

### **15.5 Receiver's powers**

Unless the terms of appointment restrict a Receiver's powers, the Receiver may do one or more of the following:

- (a) improve the Collateral;
- (b) sell, transfer or otherwise dispose of the Collateral or any interest in it;
- (c) lease or licence the Collateral or any interest in it, or deal with any existing lease or licence (including allowing a surrender or variation);
- (d) take or give up possession of the Collateral as often as it chooses;
- (e) sever, remove and sell fixtures attached to the Collateral;
- (f) obtain registration of the Collateral in the Secured Party's or its nominee's name;
- (g) if the Grantor is not a corporation to which the Corporations Act applies, do anything which the law would allow a Receiver to do if the Grantor was a corporation incorporated (or deemed to be incorporated) under the Corporations Act;

- (h) do anything else the law allows an owner or a Receiver of the Collateral to do.

---

## 16 Disposal of the Collateral is final

The Grantor agrees that if the Secured Party or a Receiver sells or otherwise disposes of the Collateral:

- (a) the Grantor will not challenge the acquirer's right to acquire the Collateral (including on the ground that the Secured Party or the Receiver was not entitled to dispose of the Collateral or that the Grantor did not receive notice of the intended disposal) and the Grantor will not seek to reclaim that property; and
- (b) the person who acquires the Collateral need not check whether the Secured Party or the Receiver has the right to dispose of the Collateral or whether the Secured Party or the Receiver exercises that right properly.

---

## 17 Power of attorney

### 17.1 Appointment

The Grantor irrevocably appoints the Secured Party, each Authorised Officer of the Secured Party, and each Receiver individually as the Grantor's attorney and agrees to ratify anything an Attorney does under clause 17.2 ("Powers").

### 17.2 Powers

If an Event of Default is continuing, an Attorney may:

- (a) do anything which the Grantor can lawfully authorise an attorney to do in connection with any Finance Document or the Collateral or which the Attorney believes is expedient to give effect to any of the Secured Party's or a Receiver's rights, powers or remedies in connection with any Finance Document or at law (these things may be done in the Grantor's name or the Attorney's name, and they include signing and delivering documents, transferring, selling or leasing the Collateral, transferring, selling or surrendering any lease, lodging or withdrawing caveats, starting, conducting and defending legal proceedings, and sending any instructions, messages or communications by which the Collateral can be transferred or otherwise dealt with);
- (b) delegate their powers (including this power) and revoke a delegation; and
- (c) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.

## 18 Reinstatement of rights

Under law relating to Insolvency, a person may claim that a transaction (including a payment) in connection with the Secured Money is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) the Secured Party is immediately entitled as against the Grantor to the rights in respect of the Secured Money to which it was entitled immediately before the transaction; and

- (b) on request from the Secured Party, the Grantor agrees to do anything (including signing any document) to restore to the Secured Party any Encumbrance (including this security) it held from the Grantor immediately before the transaction.

---

## **19 Notices and other**

All notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be given in accordance with clause 30 ("Notices") of the Facility Agreement.

---

## **20 General**

### **20.1 Prompt performance**

If this deed specifies when a party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all of its other obligations promptly. Time is of the essence in this deed in respect of an obligation of the Grantor to pay money.

### **20.2 Certificates**

The Secured Party may give the Grantor a certificate about the amount of the Secured Money or another amount payable or other matter in connection with this deed or the Finance Documents. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

### **20.3 Discretion in exercising rights**

The Secured Party or a Receiver may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this deed in its absolute discretion (including by imposing conditions).

### **20.4 Partial exercising of rights**

If the Secured Party or a Receiver does not exercise a right, power or remedy in connection with this deed fully or at a given time, the Secured Party or Receiver may still exercise it later.

### **20.5 Conditions of consents, approvals or waivers**

The Grantor agrees to comply with all conditions in any consent, approval or waiver given in connection with this deed.

### **20.6 No liability for loss**

Neither the Secured Party nor a Receiver or other person appointed by them under this deed is liable for any loss, liability or Costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this deed.

### **20.7 Conflict of interest**

The Secured Party and a Receiver may exercise their rights, powers and remedies in connection with this deed even if this involves a conflict of interest or the Secured Party or Receiver has a personal interest in their exercise.

## 20.8 Secured Party or Receiver in possession

If the Secured Party exercises any right, power or remedy in connection with this deed or at law to enter or take possession of the Collateral, it:

- (a) has complete and unfettered discretion as to how the Collateral is managed; and
- (b) is liable to account only for rents and profits actually received by it.

The same applies to any Receiver when acting as agent of the Secured Party.

## 20.9 Remedies cumulative

The rights, powers and remedies of the Secured Party or a Receiver in connection with this deed are in addition to other rights, powers and remedies given in any other document or by law independently of this deed.

## 20.10 Other Encumbrances or judgments

This deed does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any Encumbrance or other right, power or remedy to which the Secured Party is entitled; or
- (b) a judgment which the Secured Party obtains against the Grantor in connection with the Secured Money.

The Secured Party may still exercise its rights, powers or remedies under this deed as well as under the judgment, other Encumbrance or the right, power or remedy.

## 20.11 Continuing security

This security is a continuing security despite any intervening payment, settlement or other thing until the Secured Party releases all of the Collateral from the security interest.

## 20.12 Indemnities and reimbursement obligations

Any indemnity, reimbursement, payment or similar obligation in this deed given by the Grantor:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this deed, any settlement or any other thing; and
- (b) is independent of the Grantor's other obligations under this deed or any other document; and
- (c) continues after this deed, or any obligation arising under it, ends.

It is not necessary for the Secured Party to incur expense or make payment before enforcing a right of indemnity in connection with this deed.

## 20.13 Rights and obligations are unaffected

The Secured Party's or a Receiver's rights, powers and remedies and the Grantor's obligations in connection with this deed are not affected by anything which might otherwise affect them at law.

#### **20.14 Supervening law**

Any present or future law which operates to vary the obligations of the Grantor in connection with this deed with the result that the Secured Party's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

#### **20.15 Variation and waiver**

- (a) A provision of this deed, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party or parties to be bound.
- (a) No failure to exercise and no delay in exercising a Power operates as a waiver, nor does any single or partial exercise of a Power preclude any other or further exercise of that or any other Power.
- (b) Powers in the Finance Documents are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

#### **20.16 Severability of provisions**

If:

- (a) a law would otherwise make a provision of this deed illegal, void or unenforceable; or
- (b) a provision of this deed would otherwise contravene a requirement of a law or impose an obligation or liability which is prohibited by law,

this deed is to be read as if that provision were varied to the extent necessary to comply with that law or, if necessary, omitted.

#### **20.17 Receipts**

The receipt of a Receiver, the Secured Party or an Authorised Officer of the Secured Party releases the person paying money to the Receiver or the Secured Party in connection with this deed from:

- (a) liability to enquire whether the Secured Money has become payable; and
- (b) liability for the money paid or expressed to be received; and
- (c) being concerned to see to its application or being answerable or accountable for its loss or misapplication.

#### **20.18 Each signatory bound**

This deed binds each person who signs as Grantor even if another person who was intended to sign does not sign it or is not bound by it.

#### **20.19 Moratorium Legislation**

To the full extent permitted by law, all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of the Grantor any obligation under a Finance Document; or

- (b) delays, prevents or prejudicially affects the exercise by the Secured Party, Receiver or Attorney of any Power,

is excluded from the Finance Document.

#### **20.20 Counterparts**

This deed may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document.

#### **20.21 Governing law and jurisdiction**

- (a) The law in force in Victoria governs this deed. The parties to this deed submit to the non-exclusive jurisdiction of the courts of that place (including in respect of a dispute relating to the existence, validity or termination of this deed (a **Dispute**). To the extent permitted by law, the law of the Commonwealth as it applies in that jurisdiction governs this security.
- (b) The parties to this deed agree that those courts are the most appropriate and convenient courts to settle Disputes and accordingly no such party will argue to the contrary.

#### **20.22 Serving documents**

Without preventing any other method of service any document in an action in connection with this deed may be served on a party by being delivered or left at that party's address for service of notices under clause 30.3 ("*Delivery*") of the Facility Agreement.

**EXECUTED** as a deed

# Specific Security Agreement

## Signing page

### Grantor

**EXECUTED** by **LIBERTY BELL BAY**  
(**ABN 23 004 456 035**) in accordance  
with section 127(1) of the *Corporations*  
*Act 2001* (Cth):

Out of Scope

Signature of director

IAIN HUNTER

Name of director (block letters)

Out of Scope

Signature of director/company  
secretary

SANDIP BISWAS

Name of director/company secretary  
(block letters)

### Secured Party

**EXECUTED** as a deed for and on behalf of the State of Tasmania by The Honourable  
Felix Ashton Ellis MP (being and as the Minister for the time being administering the  
*Tasmanian Development Act 1983* (Tas)) in the presence of the witness named below:

Minister's  
signature:

→

Out of Scope

Witness'  
signature:

→

Out of Scope

\*Witness  
print  
name:

Adam Foster

\*Use **BLOCK LETTERS**

\*Witness  
print  
address:

Lvl 5, 4 Salamanca Place  
Hobart TAS

**Verification Certificate**

From: Liberty Bell Bay Pty Ltd (ABN 23 004 456 035)  
To: The State of Tasmania (acting through the Minister administering the Tasmanian Development Act 1983 (Tas) and represented by the Department of State Growth.  
Date: 2025

**Liberty Bell Bay Pty Ltd – Facility Agreement**

**Dated on or about the date of this Certificate (the "Agreement")**

We are directors of Liberty Bell Bay Pty Ltd (ABN 23 004 456 035) of Level 34 50 Bridge Street Sydney NSW 2000 ("**Borrower**") and are each authorised to execute this Certificate in the name of the Borrower.

We refer to the Agreement. Terms defined in the Agreement shall have the same meaning in this certificate unless given a different meaning in this certificate.

Attached are complete copies of the following:

1. The constitutional documents of the Borrower.
2. Circular resolution of directors of the Borrower:
  - (a) Approving the terms of, and the transactions contemplated by, the Finance Documents to which it is expressed to be a party and resolving that it execute the Finance Documents to which it is expressed to be a party;
  - (b) Resolving that the Loan is of overall commercial benefit to the Borrower and that the Borrower is solvent and will not become insolvent because of the Loan;
  - (c) Authorising the execution of each Finance Document to which it is expressed to be a party on its behalf; and
  - (d) Authorising a specified person or persons, on its behalf, as authorised signatory to sign and/or dispatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is expressed to be a party.

The Borrower is solvent. It is not prevented by Chapter 2E of the *Corporations Act 2001* from entering into and performing any of the Finance Documents to which it is expressed to be a party.

Borrowing or guaranteeing, as appropriate, the Commitments would not cause any borrowing, ending on the Borrower to be exceeded

Out of Scope  
[Redacted Signature]

Out of Scope  
[Redacted Signature]

IAIN HUNTER  
Director

SANDIP BISWAS  
Director

## LIBERTY BELL BAY PTY LTD

ACN 004 456 035 (the *Company*)

---

**Circular Resolutions of Directors**


---

We, being all of the Directors of the Company entitled to vote, state that we are in favour of the following resolution:

**BACKGROUND**

It was proposed that the Company, enter into certain financing arrangements evidenced by the documents described in Schedule 1 (**Transaction Documents**) for various purposes (the **Transaction**) including in connection with, among other things, the loan of funds by the State of Tasmania (acting through the Minister administering the Tasmanian Development Act 1983 (Tas) and represented by the Department of State Growth ("**Lender**") to the Company to fund various shipments of ore from South 32 Limited (ABN 84 093 732 597) or any of its Affiliates ("**South 32**") and it was proposed that, in connection with the Transaction, the Company will enter into the Transaction Documents to which it is a party.

**Documents**

The latest draft of each available Transaction Document was made available to the directors of the Company and it was noted that the Transaction Documents were being negotiated and have not yet been finalised.

**Interested directors**

The directors of the Company were given an opportunity, in accordance with section 191 of the *Corporations Act 2001* (Cth), to disclose whether they had an interest in any Transaction Document or any transaction contemplated by any Transaction Document. No such interest was disclosed.

**Breach**

It was noted that the directors of the Company were of the opinion that the entry into and performance of the Transaction Documents, and effecting the transactions under them, would not violate the *Corporations Act 2001* (Cth).

**RESOLUTIONS**

After due and careful consideration, **RESOLVED THAT:**

- 1 the Transaction is approved;
- 2 the obligations, terms and provisions of and the transactions contemplated by:
  - a. each Transaction Document (to which it is a party); and
  - b. any other document, consent, certificate, form, notice or instructions incidental to, ancillary to, in connection with or related to the Transaction Documents (**Incidental Documents**), (as each may be amended, added to and supplemented) are approved;
- 3 the Company execute, deliver and perform its obligations under:
  - a. each Transaction Document (to which it is a party); and
  - b. any other Incidental Document,
 as each may be amended, added to and supplemented;
- 4 the entry by the Company into each Transaction Document (to which it is a party) and any Incidental Document (to which it is party) is for the commercial benefit of, and in the best interests of, the Company;

- 5 the Company is not insolvent and will not become insolvent because of the transactions contemplated in the Transaction Documents;
- 6 each director and company secretary of the Company be authorised on behalf of the Company to negotiate, finalise and approve the terms of and parties to the Transaction Documents and any Incidental Documents entered into in respect of the Transaction (such approval will be evidenced by the execution of the Transaction Documents and the Incidental Documents in the manner set out below (as applicable));
- 7 the Transaction Documents and Incidental Documents, when approved in the manner set out above, be executed and delivered on behalf of and in the name of the Company by any two directors or any director and company secretary in accordance with section 127(1) of the *Corporations Act 2001* (Cth); or
- 8 any director and company secretary, acting individually or jointly, be authorised to:
- a. sign and despatch any other document, certificate, form, request or notice to be sent by the Company in connection with the Transaction Documents and Incidental Documents (to which the Company is a party); and
  - b. take any other action necessary or desirable in connection with the Transaction or any of the above resolutions; and
- 9 any director and company secretary be appointed severally as authorised signatories of the Company and be authorised severally to do everything that is required to be, or capable of being, done by the Company (including, but not limited to, certification, execution and delivery of documents) under the Transaction Documents or the Incidental Documents.

Signed by the Directors of the Company in accordance with the Company's Constitution:

Out of Scope

**SANJEEV GUPTA**

Director

Date signed: 13/08/2025

Out of Scope

**IAIN HUNTER**

Director

Date signed: 13/08/2025

Out of Scope

**SANDIP BISWAS**

Director

Date signed: 13/08/2025

### **Schedule 1 – Transaction Documents**

1. Facility Agreement between the Company and the Lender (“**Loan Agreement**”).
2. General Security Deed between the Company, and the Lender.
3. Specific Security Deed between the Company and the Lender.
4. Mortgage between the Company and the Lender.
5. Each other document which is defined as a “Finance Document” under the Loan Agreement.
6. Any document which is in substantially the same form and substance as any of the documents specified in this schedule, but has a different title or description.
7. Any document which amends, varies, restates, supplements, assigns, replaces, novates, waives, discharges or releases, or accedes any person to, any document specified in this Schedule.
8. Any agreement, deed, document, notice, consent, certificate, form and the like referred to in any document specified in this Schedule or the transactions contemplated by any document specified in this Schedule.
9. Any document, whether or not of the same kind as those listed above, which is necessary or expedient to give effect to any provision of any document specified in this Schedule or the transactions contemplated by any document specified in this Schedule.



## Memorandum of mortgage common provisions number M500

(Land Titles Office Tasmania)

---

This memorandum (consisting of 57 pages) contains the provisions which are deemed to be incorporated in mortgages which provide that the provisions of this memorandum are to form part of and to be incorporated in those mortgages.

OCS NS PRECEDENTS  
Lending Docs-LTO MCP freehold mortgage (State)-1-2014  
(May 2014)

THE CROWN SOLICITOR OF TASMANIA  
Executive Building  
15 Murray Street Hobart Tasmania 7000  
GPO Box 825 Hobart Tasmania 7001  
Telephone: (03) 6165 3630  
Facsimile: (03) 6233 2874

Doc Ref: Lending Docs-LTO MCP freehold mortgage (State)-1-2014.DOC

# Contents

---

<b>1</b>	<b>Definitions and interpretation</b>	<b>6</b>
1.1	Definitions	6
1.2	Interpretation	10
1.3	Headings	12
1.4	No rule of construction applies to disadvantage party	12
1.5	Implied covenants	12
<b>2</b>	<b>Mortgage and title documents</b>	<b>12</b>
2.1	Mortgage	12
2.2	Priority	12
2.3	Further assurance	12
2.4	Title documents	13
<b>3</b>	<b>Discharge</b>	<b>13</b>
3.1	Discharge obligation	13
3.2	Secured Moneys	13
3.3	Payment of Secured Moneys	13
<b>4</b>	<b>Representations and warranties</b>	<b>14</b>
4.1	Warranties	14
4.2	Survival and repetition of representations and warranties	16
4.3	Reliance by Mortgagee	16
4.4	No reliance by Mortgagor	16
<b>5</b>	<b>Payments by Mortgagor</b>	<b>16</b>
5.1	Payment of Secured Moneys	16
5.2	Interest	17
5.3	Appropriation	17
5.4	Manner of payment	18
5.5	Currency of payment	18
5.6	Payments in gross	18
5.7	Notification of withholding	18
5.8	Certificate as to Secured Moneys	18
5.9	GST	19
<b>6</b>	<b>Restrictions on dealing with Mortgaged Property</b>	<b>19</b>
6.1	Negative pledge	19
6.2	Disposal restrictions	19
6.3	Restrictions in dealing with any Lease	20
6.4	Caveats	20
<b>7</b>	<b>Mortgagor's general undertakings relating to Mortgaged Property</b>	<b>20</b>
7.1	Payment of outgoings	20
7.2	Repair, maintenance and protection of Mortgaged Property	20
7.3	Environmental protection and related matters	21
7.4	Use of Mortgaged Property	22
7.5	Mortgagor not to reduce value or security	22
7.6	Compliance with easements	22
7.7	Compliance with Laws and agreements	22
7.8	Mortgagee's right of entry	23
7.9	Mortgagor's business	23

7.10	Licences	23
7.11	Obligations in relation to Lease	24
7.12	Works affecting Mortgaged Property	25
7.13	Insurance	26
7.14	Encroachments	28
7.15	Compulsory acquisition	28
7.16	After-acquired interest or land	29
7.17	Information and documents concerning Mortgaged Property	29
<b>8</b>	<b>Mortgagor's general undertakings</b>	<b>29</b>
8.1	Transaction Documents	29
8.2	Notices to Mortgagee	29
8.3	Term of undertakings	30
<b>9</b>	<b>Default Events</b>	<b>30</b>
9.1	Events	30
9.2	Interpretation	33
<b>10</b>	<b>Enforcement by Mortgagee</b>	<b>33</b>
10.1	General	33
10.2	Statutory powers	33
10.3	Additional Rights	34
10.4	Discharge of prior Security Interests	37
<b>11</b>	<b>Receiver – appointment and powers</b>	<b>37</b>
11.1	Appointment of Receiver	37
11.2	Termination	38
11.3	Agency	38
11.4	Rights	38
<b>12</b>	<b>Application and receipt of money</b>	<b>39</b>
12.1	Application of money	39
12.2	Money actually received	39
12.3	Contingent debts	39
12.4	Receipts	40
12.5	Surplus moneys	40
<b>13</b>	<b>Power of attorney</b>	<b>40</b>
13.1	Appointment	40
13.2	Powers of an Attorney	40
13.3	Ratification	41
13.4	Conflict	41
13.5	Consideration	41
<b>14</b>	<b>Protection of third parties</b>	<b>41</b>
14.1	No duty to enquire	41
14.2	Authorisation	41
<b>15</b>	<b>Protection of Mortgagee and its Rights</b>	<b>41</b>
15.1	Protection of Mortgagee, Receiver and Attorney	41
15.2	Mortgagee in possession	42
15.3	Notice of exercise of rights	42
15.4	Statutory powers	42
15.5	Moratorium provisions	42

15.6	Continuing security	43
15.7	No merger of security	43
15.8	Exercise of rights	44
15.9	No marshalling	44
15.10	Completion of blanks	44
15.11	Increase in financial accommodation	44
15.12	Determination	44
15.13	Future accommodation	44
15.14	Performance of the Mortgagor's obligations	44
15.15	Mortgagor to assist exercise of the Rights	44
<b>16</b>	<b>Indemnities</b>	<b>45</b>
16.1	Indemnities to Receiver and Attorney	45
16.2	Mortgagor's general indemnity	45
16.3	Foreign currency indemnity	45
16.4	Independence and survival of indemnities	45
<b>17</b>	<b>Strata titles</b>	<b>46</b>
17.1	Application	46
17.2	Interpretation	46
17.3	Strata title obligations	46
17.4	Authority to obtain information	47
17.5	Strata title Default Events	47
<b>18</b>	<b>Third party provisions</b>	<b>47</b>
18.1	Liability not affected	47
18.2	Suspension of Mortgagor's rights	50
18.3	Bankruptcy or liquidation	50
18.4	Void transactions	50
18.5	Appropriation	51
18.6	Suspense account	51
18.7	Enforcement	51
18.8	Interpretation	51
<b>19</b>	<b>Notices</b>	<b>51</b>
19.1	Notice requirements	51
19.2	Method and address for delivery	52
19.3	Time of receipt	52
19.4	Other modes or places of service	52
<b>20</b>	<b>Costs and expenses</b>	<b>53</b>
20.1	Obligation to pay or reimburse	53
20.2	Legal costs	53
20.3	Mortgagor to bear costs	54
20.4	Remuneration	54
<b>21</b>	<b>Miscellaneous</b>	<b>54</b>
21.1	Governing law	54
21.2	Dispute jurisdiction	54
21.3	Liability	54
21.4	Binding obligation	54
21.5	Benefit	54
21.6	Compliance with obligations	54
21.7	Severance	55

21.8	Further assurance	55
21.9	Business Days	55
21.10	Amendment	55
21.11	Waiver	55
21.12	Successors and assigns	55
21.13	Rights cumulative	55
21.14	Assignment	56
21.15	Set-off	56
21.16	Disclosure	56
21.17	Determination	56
21.18	Exercise of powers	56
21.19	Consent and approvals	56
21.20	Doctrine of merger	57
21.21	Minister or State of Tasmania expressed to be party	57
21.22	No interference with executive duties or powers	57

Released under RTI

# Mortgage terms and conditions

---

## 1 Definitions and interpretation

### 1.1 Definitions

In this Mortgage, unless the context otherwise requires:

**Attorney** means an attorney appointed pursuant to any Transaction Document (including an attorney appointed pursuant to clause 13.1) and any delegate or sub-attorney of such an attorney.

**Authorisation** includes any consent, authorisation, registration, filing, lodgement, document, certificate, permission, Licence, approval, authority or exemption prescribed by Law or required by any Government Body.

**Authorised Representative** means:

- (a) for the Mortgagee, each Secretary, Acting Secretary and Deputy Secretary of the Department, and a nominee of any of them; or
- (b) for any other party, a person authorised in writing by that party.

**Business Day** means a day that is not a Saturday, a Sunday, Easter Tuesday or a statutory holiday (as defined in the *Statutory Holidays Act 2000* (Tas)) generally observed in Hobart.

**Collateral Security** means any Security Interest (other than this Mortgage) or Guarantee at any time granted, or agreed to be granted, by any person to secure, or otherwise provide for the payment or repayment of, amongst other things, any of the Secured Moneys. For the avoidance of doubt, the expression includes:

- (c) a Guarantee at any time granted, or agreed to be granted, by any other person to the Mortgagee that guarantees the payment or repayment of any moneys which are also guaranteed by the Mortgagor; and
- (d) any Security Interest (other than this Mortgage) at any time granted, or agreed to be granted, by any other person in respect of any such Guarantee.

**Conveyancing Act** means the *Conveyancing and Law of Property Act 1884* (Tas).

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

**Crown** means the Crown in Right of Tasmania.

**Default Event** means any of the events specified in clause 9.1 or clause 17.5.

**Department** means the department representing the Crown that is responsible for the administration of this Mortgage.

**Encumbrance** means any Security Interest, Lease, easement, profit a prendre, restrictive covenant, equity, interest or assignment of income, and includes any agreement to grant or create any of the foregoing.

**Environmental Law** means any Law relating to the environment, including Laws relating to land use, development, heritage protection, pollution, waste disposal, toxic and hazardous substances, conservation or resources.

**Environmental Liability** means any actual, contingent or prospective liability, obligation, expense, penalty or fine arising out of a breach of an Environmental Law that could be imposed upon the Mortgagor, any of its successors in title or the Mortgagee.

**Government Body** includes a body politic, a government (federal, state or local), a governmental, judicial or administrative body, a tribunal, a commission, a department or agency of any government, and a statutory authority or instrumentality.

**GST** means any goods and services tax or similar tax imposed by the Commonwealth of Australia (but excluding any penalty, fine, interest or similar payment).

**GST Laws** means applicable Laws relating to GST.

**Guarantee** means any guarantee, indemnity, letter of credit, letter of comfort, put option or other obligation given by a person (including where applicable, the Mortgagor):

- (a) to secure or to otherwise be responsible for the performance of any obligation by another person, including an obligation to pay any debt or monetary liability; or
- (b) to indemnify a person against the consequences of a default by another person in the performance of an obligation by that other person.

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (b) legislation and subordinate legislation; and
- (c) requirements, approvals (including conditions) and guidelines of any Government Body that have force of law.

**Lease** means any lease, agreement for lease, tenancy, occupancy or licence (whether registered under the Titles Act or not) affecting the Mortgaged Property.

**Licence** means a licence, permit, authorisation, authority or exemption for the lawful conduct of any activity on or any particular use of the Mortgaged Property, including as applicable:

- (a) a licence to sell and/or manufacture any alcoholic beverage;
- (b) a permit to develop the Mortgaged Property or carry out any building works or earthworks on the Mortgaged Property;
- (c) a licence to discharge toxic or hazardous substances from the Mortgaged Property; and
- (d) in the case of rural, agricultural, horticultural or pastoral land, a licence or quota regulating the production or sale of anything produced on the Mortgaged Property.

**Loan Agreement** means each agreement (if any, and whether made before, on or after the date of this Mortgage) pursuant to which the Mortgagee now or at any time has extended, advanced or provided, or agrees to extend, advance or provide, any facility, loan or financial accommodation to the Mortgagor.

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

- (a) the value of the Mortgaged Property as a security;
- (b) the ability or capacity of any Transaction Party to perform any of its obligations (actual, prospective or contingent) under any Transaction Document; or

(c) the effectiveness, priority or enforceability of any Transaction Document.

**month** means calendar month.

**this Mortgage** means this mortgage and includes all its annexures, appendices, attachments and schedules (if any).

**Mortgaged Property** means:

- (a) the land mortgaged by this Mortgage; and
- (b) without limiting paragraph (a), includes:
  - (i) all fixtures, buildings, improvements, erections and structures on or affixed to that land; and
  - (ii) all paths, passages, ways, waters, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals, quarries, trees and timber and other benefits on, of or used or enjoyed in conjunction with that land.

**Mortgagor** means the person named in this Mortgage as the Mortgagor. When two or more persons comprise the Mortgagor, the expression **Mortgagor** includes a reference to each of those persons separately, to all of those persons collectively, and to any two or more of those persons collectively.

**Permitted Encumbrance** means:

- (a) an Encumbrance:
  - (i) approved in writing by the Mortgagee; or
  - (ii) notified in writing to the Mortgagee prior to the Mortgagee executing this Mortgage;
- (b) any lien or charge which arises by operation of an applicable Law to secure an obligation for the payment of taxes or moneys for services in relation to the Mortgaged Property before the due date for payment; and
- (c) a deemed security interest under section 12(3) of the PPSA which does not secure payment or performance of an obligation.

**Potential Default** means any event, thing or circumstance which likely would become a Default Event with the giving of notice, the making of a determination or the passage of time (or any combination of those things).

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

**PPSA Security Interest** has the meaning given to the term 'security interest' in the PPSA.

**Receiver** means a receiver or receiver and manager appointed by the Mortgagee in relation to the Mortgaged Property.

**Right** includes a right, a power, a remedy, a discretion or an authority.

**Secured Moneys** means all amounts, debts and monetary liabilities which now or at any time and for any reason are owing, payable or unpaid by the Mortgagor to, or incurred by the Mortgagor with, the Mortgagee (irrespective of whether such amounts, debts and monetary liabilities are or were within the contemplation of the parties as at the date of this Mortgage), including amounts, debts and monetary liabilities which:

- (a) are present or future;
- (b) are currently, prospectively or contingently owing or payable;
- (c) are ascertained or unascertained;
- (d) are owing, incurred or payable by the Mortgagor in any, or any combination, of the following ways:
  - (i) in connection with, under or pursuant to any Transaction Document, document (whether negotiable or not), transaction or engagement;
  - (ii) in respect of any facility, loan or financial accommodation which the Mortgagee has extended, advanced or provided or is liable to extend, advance or provide to, on behalf of or at the express or implied request of the Mortgagor;
  - (iii) in respect of any moneys paid by the Mortgagee or which the Mortgagee is liable to pay at the express or implied request of the Mortgagor;
  - (iv) as principal, interest, fees, charges, costs or damages (including liquidated or unliquidated damages in respect of any breach by the Mortgagor of any obligation owed to the Mortgagee, any tort by the Mortgagor or any other act or omission of the Mortgagor);
  - (v) alone, or jointly or jointly and severally with any other person;
  - (vi) as a principal debtor, pursuant to an indemnity, as a guarantor for any person or otherwise;
  - (vii) personally or in any other right or capacity including as a trustee;
  - (viii) on any other account or basis or for any other reason;
- (e) are unpaid but which are not owing or payable because they are not recoverable personally as against the Mortgagor for any reason;
- (f) are owing, payable or unpaid to the Mortgagee:
  - (i) alone, or jointly or jointly and severally with any other person;
  - (ii) personally or in any other right or capacity;
  - (iii) as an original obligee or as an assignee and whether or not:
    - (A) the assignment took place before or after the execution or delivery of this Mortgage or any other document;
    - (B) the Mortgagor consented to or was aware of the assignment; or
    - (C) the assigned obligation was secured; or
- (g) are made up of all or any combination of the above.

**Security Interest** means:

- (a) a PPSA Security Interest; or
- (b) any mortgage, charge, bill of sale, pledge, deposit, lien, hypothecation, arrangement for the retention of title or any other interest or power given by way of security for any debt, monetary liability or other obligation,

and includes any agreement to grant or create any of the foregoing.

**Security Provider** means any person (in any capacity) who at any time has granted or has agreed to grant any Collateral Security.

**Specified Currency** means the currency in which a payment is required to be made, and unless expressly stated to be another currency is Australian dollars.

**Strata Act** means the *Strata Titles Act 1998* (Tas).

**Titles Act** means the *Land Titles Act 1980* (Tas).

**Transaction Documents** means:

- (a) this Mortgage;
- (b) each Collateral Security;
- (c) each Loan Agreement;
- (d) each document pursuant to which the Mortgagee now or at any time has extended, advanced or provided, or agrees to extend, advance or provide, any facility, loan or financial accommodation to a person named as a debtor in any Guarantee granted by the Mortgagor to the Mortgagee;
- (e) each Guarantee given by the Mortgagor to the Mortgagee;
- (f) any document the Mortgagor and the Mortgagee agree in writing to be a Transaction Document; and
- (g) any document which is a Transaction Document for the purposes of any other Transaction Document,

and **Transaction Document** means any of such documents.

**Transaction Parties** means:

- (a) the Mortgagor;
- (b) each Security Provider; and
- (c) any other person (in any capacity) who at any time is under any actual or contingent obligation or liability to the Mortgagee to pay or repay of the Secured Moneys,

and **Transaction Party** means any of them.

**Works** means building works, demolition works or earthworks on or affecting the Mortgaged Property (including works altering or extending any building or structure on the Mortgaged Property or changing the external coating or colour of any such building or structure).

## 1.2 Interpretation

In this Mortgage, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include all genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Mortgage have a corresponding meaning;

- (d) a reference to a thing (including property or an amount) is a reference to the whole and each part of that thing;
- (e) a reference to a group of persons includes a reference to any one or more of those persons;
- (f) a reference to an annexure, an appendix, an attachment, a schedule, a party, a clause or a part is a reference to an annexure, an appendix, an attachment, a schedule or a party to, or a clause or a part of, this Mortgage;
- (g) a reference to any legislation or legislative provision includes subordinate legislation made under it and any amendment to, or replacement for, any of them;
- (h) writing includes any thing on which there are marks, figures, symbols, images or perforations having a meaning for persons qualified to interpret them;
- (i) a reference to a document includes:
  - (i) any thing on which there is writing;
  - (ii) any thing from which sounds, images or writings can be reproduced with or without the aid of any thing else;
  - (iii) an amendment or supplement to, or replacement or novation of, that document; or
  - (iv) a map, plan, drawing or photograph;
- (j) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (k) a reference to a 'person' includes a natural person, a partnership, a body corporate, a corporation sole, an association, a Government Body, or any other entity;
- (l) a reference to a party includes that party's executors, administrators, successors and permitted assigns and substitutes;
- (m) a reference to a Minister includes, as applicable, that Minister's predecessors and successors in office;
- (n) a reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or functions of which have been substantially transferred, is taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred;
- (o) a reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office;
- (p) mentioning any thing after the words 'includes', 'included' or 'including' does not limit the meaning of any thing mentioned before those words;
- (q) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later;

- (r) reference to a time or date in connection with the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere; and
- (s) references to '\$' and 'dollars' are to Australian dollars.

### **1.3 Headings**

Headings are included for convenience only and do not affect the interpretation of this Mortgage.

### **1.4 No rule of construction applies to disadvantage party**

In relation to the interpretation of this Mortgage, no rule of construction is to apply to the disadvantage of a party because that party was responsible for the preparation of this Mortgage or any part of it.

### **1.5 Implied covenants**

The covenants and provisos implied by the Conveyancing Act by the use of any words in this Mortgage are taken to be fully set out in this Mortgage.

---

## **2 Mortgage and title documents**

### **2.1 Mortgage**

The Mortgagor mortgages the Mortgaged Property to the Mortgagee to secure:

- (a) the due and punctual payment of the Secured Moneys; and
- (b) the due and punctual performance of each of the Mortgagor's obligations under each Transaction Document to which it is a party.

### **2.2 Priority**

This Mortgage is intended to take priority over all other Encumbrances affecting the Mortgaged Property other than:

- (a) any Permitted Encumbrance which ranks in priority to this Mortgage;
- (b) an Encumbrance (not being a Security Interest that ranks in priority to this Mortgage) disclosed by the title to the Mortgaged Property as registered under the Titles Act; or
- (c) an Encumbrance created by a Transaction Document to which the Mortgagee is a party.

### **2.3 Further assurance**

- (a) The Mortgagor must whenever requested by the Mortgagee, execute any document and perform any act which the Mortgagee may require for the purposes of:
  - (i) further or more effectually securing to the Mortgagee the Mortgaged Property for payment of the Secured Moneys;
  - (ii) protecting or enabling the exercise of any Right;
  - (iii) giving to the Mortgagee those Rights and the benefit of those obligations which it was intended or contemplated that the Mortgagee would have under, in relation to, or because of, this Mortgage; or

- (iv) procuring the registration of this Mortgage in accordance with the Titles Act.
- (b) The Mortgagee, at the Mortgagor's cost and in the name of the Mortgagor:
  - (i) may apply for and obtain amendments to the title to the Mortgaged Property; and
  - (ii) may do any act, matter or thing which the Mortgagee considers necessary:
    - (A) to perfect the title of the Mortgagor to the Mortgaged Property or the Mortgagee's interest in the Mortgaged Property;
    - (B) to make the Mortgaged Property more saleable; or
    - (C) to procure the registration of this Mortgage.

## **2.4 Title documents**

Subject to the rights of any prior mortgagee, until the discharge of this Mortgage, the Mortgagee is entitled to have and retain possession of:

- (a) the grant or certificate of title to the Mortgaged Property and of any certificate of title which is issued in substitution or replacement;
- (b) if required by the Mortgagee, the Mortgagor's counterpart of each Lease; and
- (c) any other document of title relating to the Mortgaged Property.

---

## **3 Discharge**

### **3.1 Discharge obligation**

The Mortgagee must, at the request of the Mortgagor in writing and at the cost of the Mortgagor, discharge this Mortgage if:

- (a) the Secured Moneys have been paid in full (including any moneys owing or payable on a contingent basis);
- (b) the Mortgagor has fully performed and discharged all of its obligations and liabilities under each Transaction Document to which it is a party;
- (c) in the opinion of the Mortgagee, no payment of any Secured Moneys is, or is likely to be declared, void, voidable, repayable or refundable under or pursuant to any Law; and
- (d) no other person is entitled to the benefit of this Mortgage under any Law relating to guarantees or otherwise.

### **3.2 Secured Moneys**

For the avoidance of doubt, the reference to the Secured Moneys in clause 3.1 includes all of the Secured Moneys including moneys owing or payable contingently and regardless of whether any Secured Moneys are actually due and payable.

### **3.3 Payment of Secured Moneys**

The payment of the Secured Moneys for the time being secured by this Mortgage does not discharge the Security Interest created this Mortgage.

---

## 4 Representations and warranties

### 4.1 Warranties

The Mortgagor represents and warrants to the Mortgagee that:

- (a) **(title)**: the Mortgagor has or is entitled to an absolute and indefeasible title to the Mortgaged Property under the provisions of the Titles Act for the estate and interest described in this Mortgage
- (b) **(Mortgagor does not act as trustee)**: except as previously disclosed in writing by the Mortgagor to the Mortgagee prior to the date of this Mortgage, the Mortgagor does not enter into this Mortgage, and does not hold the Mortgaged Property, as trustee of any trust or for the benefit of any other person;
- (c) **(Encumbrances)**: there are no Encumbrances affecting the Mortgaged Property which rank in priority to or equally with this Mortgage other than a Permitted Encumbrance or an Encumbrance disclosed by the title (as registered under the Titles Act) to the Mortgaged Property;
- (d) **(possession)**: except as previously disclosed in writing by the Mortgagor to the Mortgagee prior to the date of this Mortgage:
  - (i) the Mortgagor is in exclusive possession and occupation of the Mortgaged Property; and
  - (ii) the Mortgaged Property is not subject to any Lease;
- (e) **(Mortgaged Property)**: except as previously disclosed in writing by the Mortgagor to the Mortgagee prior to the date of this Mortgage, the Mortgagor does not have any actual, constructive or implied notice of:
  - (i) any proposal to change the zoning or the permitted use of the Mortgaged Property;
  - (ii) any proposal to change or introduce any planning scheme affecting the Mortgaged Property which if implemented may have a Material Adverse Effect;
  - (iii) any proposal to widen any road or construct any new roads adjacent to or near the Mortgaged Property that may have a Material Adverse Effect;
  - (iv) any proposal by a Government Body to compulsorily acquire the Mortgaged Property or any estate or interest in it;
  - (v) any actual or potential for flooding, landslip, mining subsidence or tidal inundation that has or may affect the Mortgaged Property;
  - (vi) any easements, restrictive covenants or other rights, estates or interests affecting the Mortgaged Property which are not disclosed by the title to the Mortgaged Property as registered under the Titles Act;
  - (vii) any material breach of, or material dispute in relation to, any Lease; or
  - (viii) any direct or indirect contamination or pollution of the Mortgaged Property by anything (including toxic or hazardous substances) which:
    - (A) lessens or may lessen the value of the Mortgaged Property;

- (B) if the Mortgaged Property is rural, agricultural, horticultural or pastoral land, makes or may make the Mortgaged Property unsafe or unfit for any rural, agricultural, horticultural or pastoral use; or
  - (C) makes or may make the Mortgaged Property unsafe or unfit for humans or animals;
- (f) **(no disputes)**: except as previously disclosed in writing by the Mortgagor to the Mortgagee prior to the date of this Mortgage, there are no actions or proceedings commenced or threatened which may have a Material Adverse Effect;
- (g) **(works)**: each building, improvement, erection or structure on or forming part of the Mortgaged Property has been completed in accordance with all applicable Laws and there is no impediment to its use or occupation;
- (h) **(transaction permitted)**: the execution, delivery and performance of each Transaction Document to which it is a party will not breach in any respect any provision of:
  - (i) any applicable Law or any order or ruling of a Government Body;
  - (ii) any Encumbrance relating to the Mortgaged Property;
  - (iii) any agreement binding on the Mortgagor;
  - (iv) if the Mortgagor is a corporation, the Mortgagor's constitution;
- (i) **(incorporation)**: if the Mortgagor is a corporation, it is a corporation duly incorporated and existing under the Law of its place of incorporation and has the corporate power to enter into and perform its obligations under this Mortgage;
- (j) **(authorisations)**: all necessary action has been taken by the Mortgagor to authorise the execution and delivery of, and the performance of its obligations under, each Transaction Document to which it is a party;
- (k) **(power)**: it has full power and authority to enter into and perform its obligations under each Transaction Document to which it is a party and is not subject to any legal disability or incapacity;
- (l) **(benefit)**: it benefits by executing each Transaction Document to which it is a party;
- (m) **(binding obligation)**: each Transaction Document to which it is a party:
  - (i) constitutes a valid legal and binding obligation on the part of the Mortgagor;
  - (ii) is enforceable in accordance with its terms subject to any necessary stamping or registration;
  - (iii) is not void or voidable; and
  - (iv) has the priority which it purports to have in accordance with the Transaction Documents or any priority agreement entered into by the Mortgagee;
- (n) **(information)**: all information given, and each statement made, to the Mortgagee or its agents by the Mortgagor or its agents concerning:

- (i) any application to the Mortgagee for any facility, loan or financial accommodation secured by this Mortgage;
- (ii) the status, financial position, commitments and assets of any Transaction Party;
- (iii) the Transaction Documents;
- (iv) the insurance policies held by the Mortgagor;
- (v) the transactions contemplated by the Transaction Documents; or
- (vi) the Mortgaged Property (including any answers to requisitions),  
is true, correct and not misleading in any way;
- (o) (**disclosure**): it has fully disclosed in writing to the Mortgagee all information relating to the matters which are material to the assessment, and nature, of the risks accepted, or to be accepted, by the Mortgagee pursuant to each of the Transaction Documents; and
- (p) (**Default Event**): except as previously disclosed in writing by the Mortgagor to the Department prior to the date of this Mortgage, no Default Event or Potential Default has occurred or is continuing.

#### **4.2 Survival and repetition of representations and warranties**

Each representation and warranty in clause 4.1:

- (a) survives the execution of this Mortgage; and
- (b) is taken to be repeated with reference to the facts and circumstances then existing on each day until this Mortgage is discharged.

#### **4.3 Reliance by Mortgagee**

The Mortgagor acknowledges that each time the Mortgagee enters into and continues to perform its obligations under a Transaction Document, the Mortgagee does so in reliance on each of the representations and warranties in clause 4.1.

#### **4.4 No reliance by Mortgagor**

The Mortgagor acknowledges that it has not entered into any Transaction Document to which it is a party in reliance on any representation, warranty, promise, statement or undertaking made by the Mortgagee or any person on behalf of the Mortgagee.

---

## **5 Payments by Mortgagor**

### **5.1 Payment of Secured Moneys**

- (a) The Mortgagor must pay each amount included in the Secured Moneys to the Mortgagee:
  - (i) if the date for payment of the amount is specified in a Transaction Document or any other written agreement made between the Mortgagee and any Transaction Party, on the date that is so specified for payment; and
  - (ii) if no date for payment is so specified, on demand in writing by the Mortgagee.

- (b) Nothing in clause 5.1(a) affects any Right of the Mortgagee or any obligation of the Mortgagor to pay or repay any moneys at any earlier time pursuant to any Transaction Document or any applicable Law.

## **5.2 Interest**

- (a) The Mortgagor must pay interest on each amount of the Secured Moneys that is subject to interest under the provisions of a Transaction Document (other than this Mortgage) in accordance with the provisions of that Transaction Document until the payment or repayment of each such amount in full.
- (b) In relation to any amount of the Secured Moneys that is not subject to interest under the provisions of a Transaction Document (other than this Mortgage) or ceases to be subject to interest because of any applicable Law, the Mortgagor must pay interest on each such amount until payment or repayment in full:
  - (i) at the rate or rates from time to time as determined by the Mortgagee at any time; and
  - (ii) if no determination is made by the Mortgagee, at the highest rate or rates from time to time applicable to any part of the Secured Moneys that is then subject to interest.
- (c) Interest payable under clause 5.2(b):
  - (i) accrues from day to day;
  - (ii) will be computed from the day or respective days when the relevant amounts become owing or payable up to and including the date of payment; and
  - (iii) is payable by the Mortgagor to the Mortgagee on the dates from time to time determined by the Mortgagee (but at intervals not more frequently than monthly).
- (d) For the purposes of clause 5.2(c)(ii), any part of the Secured Moneys that represents a payment made, a loss suffered or liability incurred by the Mortgagee or any Receiver, is taken to be owing and payable by the Mortgagor to the Mortgagee on the date when that payment is made, the loss is suffered or the liability is incurred.
- (e) Without affecting any Right of the Mortgagee, any accrued interest payable under this Mortgage that is unpaid as at any date for the payment of that interest may be capitalised by the Mortgagee at its option and treated as principal. Interest that is capitalised shall carry interest in the manner and the rate from time to time applicable to that part of the Secured Moneys in respect of which the capitalised interest originally accrued.
- (f) If the liability of the Mortgagor to pay to the Mortgagee any of the Secured Moneys becomes merged in any judgment or order, the Mortgagor must pay interest on the amount from time to time owing under that judgment or order in accordance with this Mortgage.

## **5.3 Appropriation**

The Mortgagee may appropriate to the payment or repayment of any part of the Secured Moneys any payment received by the Mortgagee from the Mortgagor. An appropriation made by the Mortgagee overrides any appropriation by the Mortgagor.

#### **5.4 Manner of payment**

The Mortgagor must make each payment that it is required to make under a Transaction Document:

- (a) at a time and place reasonably determined by the Mortgagee; and
- (b) by a bank cheque or in other immediately available funds or in any other manner approved in writing by the Mortgagee.

#### **5.5 Currency of payment**

- (a) Except to the extent that a Transaction Document otherwise provides, the Mortgagor must pay each amount that it is required to pay under a Transaction Document in the Specified Currency.
- (b) If the Mortgagee accepts a payment in a currency other than the Specified Currency that payment in the other currency (**payment currency**) will not satisfy the amount payable except to the extent that the Mortgagee can in the ordinary course of business purchase the Specified Currency with the payment currency (and if necessary through intermediate currencies) at the time of or within a reasonable time after the receipt of the payment currency and after deducting from the amount of the Specified Currency which is purchased all costs associated with its purchase.

#### **5.6 Payments in gross**

The Mortgagor must make each payment which it is required to make under a Transaction Document without any set-off, counter-claim, condition or abatement, or unless required by an applicable Law (which is not negated or excluded by clause 15.5), any deduction or withholding.

#### **5.7 Notification of withholding**

If the Mortgagor is required to make a deduction or withholding from a payment under this Mortgage pursuant to an applicable Law, the Mortgagor must:

- (a) make the deduction or withholding and pay it in accordance with the applicable Law;
- (b) notify the Mortgagee in writing of the deduction or withholding; and
- (c) obtain and give to the Mortgagee a receipt or other evidence of the payment of the deduction or withholding.

#### **5.8 Certificate as to Secured Moneys**

A certificate signed by an Authorised Representative of the Mortgagee stating any one or more of:

- (a) the amount of the Secured Moneys at any time;
- (b) the amount of the Secured Moneys due and payable at any time;
- (c) the rate of interest payable at any time in relation to any amount of the Secured Moneys;
- (d) that an amount is due or payable to the Mortgagee by the Mortgagor; or
- (e) that the Mortgagee is entitled to payment of any of the above,

is prima facie evidence as to its contents without the Mortgagee being required to produce any document to verify the certificate.

## **5.9 GST**

- (a) Unless otherwise stated in this Mortgage, all amounts payable by one party to another party are exclusive of GST.
- (b) If GST is imposed or payable on any supply made by a party under this Mortgage, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.
- (c) A party that makes a taxable supply under this Mortgage must provide a valid tax invoice to the recipient of the supply.
- (d) A party's right to payment under clause 5.9(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- (e) If the consideration for a supply under this Mortgage is a payment or reimbursement for, or contribution to, any expense or liability incurred by the supplier to a third party, the amount to be paid, reimbursed or contributed in respect of the expense or liability will be the amount of the expense or liability net of any input tax credit to which the supplier is entitled in respect of the expense or liability.
- (f) Where any amount payable under this Mortgage is paid by being set-off against another amount, each amount must be calculated in accordance with this clause 5.9 as if it were an actual payment made pursuant to this Mortgage.
- (g) Unless the context otherwise requires, expressions used in this clause 5.9 that are defined in the GST Laws have the meanings given to those expressions in the GST Laws.

---

## **6 Restrictions on dealing with Mortgaged Property**

### **6.1 Negative pledge**

The Mortgagor must not, without the prior written consent of the Mortgagee, grant or agree to grant or permit to come into existence any Encumbrance over or in respect of the Mortgaged Property, other than a Security Interest in favour of the Mortgagee or a Permitted Encumbrance.

### **6.2 Disposal restrictions**

The Mortgagor must not without the prior written consent of the Mortgagee:

- (a) convey, transfer, sell, assign, surrender or dispose of:
  - (i) the Mortgaged Property; or
  - (ii) any rights or benefits which attach or relate to the Mortgaged Property;
- (b) otherwise part with possession of the Mortgaged Property; or

- (c) grant, agree to grant, create, release, vary, consent to, or seek the cancellation of any easement, profit a prendre, restrictive covenant or any other estate, interest or right affecting or which benefits the Mortgaged Property.

### **6.3 Restrictions in dealing with any Lease**

The Mortgagor must not do any of the following things, except with the prior written consent of the Mortgagee:

- (a) breach, repudiate, rescind, forfeit, determine, surrender or accept the surrender or repudiation of any Lease;
- (b) grant, or enter into any agreement to grant, any lease, agreement for lease, tenancy or licence affecting the Mortgaged Property or otherwise part with the possession of the Mortgaged Property;
- (c) vary or amend any Lease;
- (d) exercise any power of leasing under any applicable Law relating to conveyancing or otherwise;
- (e) separately assign, charge or otherwise encumber the present or future rents and profits of the Mortgaged Property; or
- (f) give any consent, approval or permission under any Lease in respect of any circumstance, matter or thing which requires the consent, approval or permission of the Mortgagor.

### **6.4 Caveats**

The Mortgagor must:

- (a) not lodge, or allow to be lodged or exist, any caveat in relation to the Mortgaged Property (other than a caveat lodged by the Mortgagee); and
- (b) promptly take all steps it can to cause the removal of any caveat in relation to the Mortgaged Property (other than a caveat lodged by the Mortgagee).

---

## **7 Mortgagor's general undertakings relating to Mortgaged Property**

### **7.1 Payment of outgoings**

- (a) The Mortgagor must duly and punctually pay or cause to be paid all rates, rents, taxes, duties, charges, expenses and outgoings payable in respect of the Mortgaged Property as and when the same respectively become due and payable, except any of which may be contested in good faith without having any prejudicial effect on the Mortgaged Property.
- (b) At the request of the Mortgagee, the Mortgagor must give to the Mortgagee all receipts and other documents evidencing the payments that the Mortgagor is required to make in accordance with this clause.

### **7.2 Repair, maintenance and protection of Mortgaged Property**

The Mortgagor must:

- (a) **(repair obligations):** maintain and protect the Mortgaged Property and carry out in a proper and workmanlike manner all works, repairs, painting, cleaning and

preventative maintenance necessary or desirable to keep the Mortgaged Property in a good and substantial state of repair, order and condition;

- (b) (**notice to repair**): repair every defect in the state or condition of the Mortgaged Property of which notice in writing is given by the Mortgagee to the Mortgagor;
- (c) (**protection**): protect the Mortgaged Property from theft, loss or damage;
- (d) (**legal action**): take or defend all such legal proceedings or other actions as the Mortgagee may think necessary or advisable for the preservation, protection or recovery of the Mortgaged Property;
- (e) (**forfeiture**): not do or suffer any act, omission or thing which could or may cause the Mortgaged Property to be liable to surrender, forfeiture, cancellation, seizure or prejudice in any manner;
- (f) (**fixtures**): not remove, sell, sever, dispose of, alter or separately grant an Security Interest over any fixture forming part of the Mortgaged Property or agree to do any of those things without the prior written consent of the Mortgagee;
- (g) (**rural land**): if any part of the Mortgaged Property is rural, agricultural, horticultural or pastoral land:
  - (i) not cut, remove or destroy any trees upon the Mortgaged Property or enter into any agreement for the cutting or removal of any trees;
  - (ii) use all reasonable measures to keep the Mortgaged Property free from, and comply generally with all applicable Laws relating to, noxious growths, noxious animals, pests, diseases and infestations; and
  - (iii) cultivate, manage, preserve and maintain the Mortgaged Property in accordance with commercially acceptable rural, agricultural, horticultural and pastoral practices suitable to the Mortgaged Property and its use; and
- (h) (**title defects**): take all such action as the Mortgagee considers necessary to rectify any defect that exists or may arise in relation to the Mortgagor's title to the Mortgaged Property.

### 7.3 Environmental protection and related matters

- (a) **Contamination**: The Mortgagor must keep the Mortgaged Property free from any direct or indirect contamination or pollution by anything (including toxic or hazardous substances) which:
  - (i) lessens or may lessen the value of the Mortgaged Property;
  - (ii) if the Mortgaged Property is rural, agricultural, horticultural or pastoral land, makes or may make the Mortgaged Property unsafe or unfit for any rural, agricultural, horticultural or pastoral use; or
  - (iii) makes or may make the Mortgaged Property unsafe or unfit for humans or animals.
- (b) **Noxious activities**: The Mortgagor must not carry on or permit to be carried on upon the Mortgaged Property any noxious or offensive act, art, trade, business or occupation.
- (c) **Nuisances affecting neighbouring property**: The Mortgagor must not cause, contribute to or permit any nuisance to or disturbance of the owners, occupiers or users of any neighbouring or adjoining property.

- (d) **Nuisances affecting the Mortgaged Property:** The Mortgagor must not permit or allow the creation or continuation of any nuisance on or affecting the Mortgaged Property, including any noxious growths, smells, noises, vibrations or the overflow or escape of any substance or thing.
- (e) **Compliance with Environmental Laws:** The Mortgagor must comply with all Environmental Laws that affect the Mortgaged Property or any activity on the Mortgaged Property.
- (f) **Environmental Liabilities:** The Mortgagor must not do or permit any person to do anything on the Mortgaged Property or bring or permit any person to bring anything onto the Mortgaged Property that results or may result in an Environmental Liability.
- (g) **Notice:** The Mortgagor must immediately give to the Mortgagee a copy of each notice, order or direction relating to the Mortgaged Property given to the Mortgagor by a Government Body under any Environmental Law.
- (h) **Environmental assessment report:** The Mortgagor must when reasonably required by the Mortgagee obtain or permit the Mortgagee to obtain an environmental assessment report from a person approved by the Mortgagee. The Mortgagor must promptly comply with any reasonable recommendation contained in any environmental assessment report relating to compliance with any Environmental Law.

#### **7.4 Use of Mortgaged Property**

The Mortgagor must:

- (a) not use the Mortgaged Property or permit it to be used in a manner which is inconsistent with the use for which the Mortgaged Property was designed or intended.
- (b) discontinue or change the use of the Mortgaged Property.

#### **7.5 Mortgagor not to reduce value or security**

The Mortgagor must not do any thing which reduces the value of the Mortgaged Property or which reduces the value or effectiveness of this Mortgage as security.

#### **7.6 Compliance with easements**

The Mortgagor must comply with all easements affecting the Mortgaged Property.

#### **7.7 Compliance with Laws and agreements**

The Mortgagor must comply with its obligations in relation to the Mortgaged Property, including:

- (a) under any Encumbrance in respect of the Mortgaged Property;
- (b) any Law binding on it or affecting it;
- (c) any Authorisation applicable to the Mortgaged Property; and
- (d) any requirements of any Government Body binding on it or its business, that, if it failed to comply, will or might reasonably be expected to materially impair its ability to perform its obligations under a Transaction Document.

## 7.8 Mortgagee's right of entry

The Mortgagor must permit the Mortgagee, each Authorised Representative of the Mortgagee and any person nominated by the Mortgagee or any of them at any time to enter on the Mortgaged Property for any purpose that is related to this Mortgage, including for the purposes of enabling the Mortgagee:

- (a) to inspect the state and condition of the Mortgaged Property;
- (b) to determine whether the Mortgagor is complying with its obligations under this Mortgage; or
- (c) to exercise any Right.

## 7.9 Mortgagor's business

The Mortgagor must, if carrying on a business on the Mortgaged Property:

- (a) carry on and conduct that business in a proper, businesslike and efficient manner; and
- (b) not without the prior written consent of the Mortgagee:
  - (i) discontinue that business or do anything which would result in any material change in the nature or the profitability of that business; or
  - (ii) purchase, acquire, establish or commence to carry on any business not carried on by the Mortgagor at the date of this Mortgage or purchase or otherwise acquire the use of any asset or property other than in the ordinary course of the business carried on by the Mortgagor at the date of this Mortgage.

## 7.10 Licences

- (a) **Obligation to obtain:** The Mortgagor must obtain and keep current each Licence. If required by the Mortgagee, the Mortgagor must take all necessary action to obtain any Licence in relation to the Mortgaged Property or the Mortgagor's business that the Mortgagee considers necessary or desirable.
- (b) **Conduct of licensed activities:** The Mortgagor must carry on in a proper manner any activity conducted on, at or from the Mortgaged Property in respect of which a Licence is or should be held.
- (c) **Mortgagor must keep Licences current:** The Mortgagor must do all things necessary or desirable to keep each Licence current and in full force and effect, including:
  - (i) complying with each applicable Law, the terms and conditions attaching to a Licence and the requirements and orders of any Government Body that has jurisdiction in relation to a Licence or the Mortgaged Property; and
  - (ii) paying or causing to be paid all fees, taxes, duties and other imposts payable in relation to each Licence.
- (d) **Dealings with Licences:** The Mortgagor must not without the prior written consent of the Mortgagee:
  - (i) do anything that prejudices or adversely affects the renewal or continuation of any Licence;

- (ii) do anything that may or would cause any Licence to be cancelled, revoked, suspended or terminated;
  - (iii) surrender or attempt to surrender any Licence;
  - (iv) transfer, assign, dispose of or otherwise deal with or part with the possession of any Licence; or
  - (v) create or permit to exist any Security Interest in relation to any Licence (other than a Security Interest in favour of the Mortgagee).
- (e) **Licence held by third party:** If a Licence is held by a person who is not the Mortgagor, the Mortgagor must obtain for the benefit of the Mortgagee a power of attorney (in a form and substance satisfactory to the Mortgagee) from the holder of the Licence. The Mortgagee may require the power of attorney to include provisions which require the donor of the power to comply with some or all of the obligations of the Mortgagor under this clause 7.10.
- (f) **Transfer of Licence:** If a Default Event occurs, the Mortgagor must, at the request of the Mortgagee, transfer or use its best endeavours to transfer each Licence to the Mortgagee or its nominee.
- (g) **Authority to obtain information:** The Mortgagor irrevocably authorises the Mortgagee, each of the Mortgagee's Authorised Representatives and each Receiver to obtain from any Government Body any information and copies of any documents relating to a Licence. A Government Body may rely upon this clause as sufficient authority to provide any information or copies of any documents.

#### 7.11 Obligations in relation to Lease

- (a) **Rent review:** The Mortgagor must take all reasonable and proper steps to ensure that upon any review of the rent or fee payable under any Lease, the rent or fee payable after review is no less than a proper market rent or market fee.
- (b) **Performance of obligations by lessee:** The Mortgagor must take all reasonable and proper steps to ensure that each lessee, tenant, licensee or other occupant under a Lease observes, performs and discharges its obligations and liabilities under or arising out of that Lease which relate to its use or occupation of the Mortgaged Property, and where necessary (or reasonably directed by the Mortgagee), institute and maintain legal proceedings to enforce any such Lease.
- (c) **Performance of obligations by Mortgagor:** The Mortgagor must observe and perform its obligations and discharge its liabilities under or arising out of any Lease.
- (d) **Enforcement of the Lease:** The Mortgagor must take all action that a prudent person would take to enforce the lessee's obligations under any Lease.
- (e) **Notices:** The Mortgagor must give to the Mortgagee in writing a copy of all notices given by the lessee to the Mortgagor under any Lease.
- (f) **Particulars of Leases:** The Mortgagor must give to the Mortgagee in writing upon request full and detailed particulars of all Leases, including particulars of:
  - (i) the names and addresses of the lessees, tenants, occupants and licensees;
  - (ii) the rents and occupation fees payable by such lessees, tenants, occupants and licensees;
  - (iii) the commencing and termination dates of each Lease; and

- (iv) such other terms and conditions of any such Lease as the Mortgagee requests.

## 7.12 Works affecting Mortgaged Property

- (a) **Mortgagor not to carry out Works:** The Mortgagor must not carry out any Works on or in relation to the Mortgaged Property except with the prior written consent of the Mortgagee.
- (b) **How Mortgagor to carry out Works:** If the Mortgagee gives its consent to the Mortgagor carrying out any Works, the Mortgagor must:
  - (i) ensure that the Works are carried out:
    - (A) in accordance with any design and building documents approved by the Mortgagee;
    - (B) in a proper and workmanlike manner;
    - (C) in accordance with all applicable Laws; and
    - (D) in accordance with any conditions imposed by the Mortgagee as a condition of giving its consent;
  - (ii) promptly obtain any appropriate certificate or other evidence that the Works have been carried out in accordance with all applicable Laws;
  - (iii) not encroach upon any adjoining land or road;
  - (iv) observe the provisions of any easement or restrictive covenant which affects the Mortgaged Property;
  - (v) complete the Works within the time agreed with the Mortgagee, or if no time has been agreed, within a reasonable time;
  - (vi) keep proper records and books of account relating to the Works;
  - (vii) permit the Mortgagee and its representatives at all reasonable times to enter upon the Mortgaged Property to inspect the Works and any building documents;
  - (viii) upon demand give to the Mortgagee and its representative any information relating to the Works it reasonably requires including copies of the building documents;
  - (ix) not, without the Mortgagee's written consent, vary or amend any building documents approved by the Mortgagee;
  - (x) indemnify the Mortgagee against any claim, liability, cost or expense caused or contributed to by any inspection or approval of any building documents or the carrying out of any Works.
- (c) **Mortgagee not liable:** The Mortgagee assumes no liability to the Mortgagor in connection with the carrying out of any Works or any building documents approved by the Mortgagee. The Mortgagee's approval of any Works or building documents does not:
  - (i) imply the exercise by or on behalf of the Mortgagee of any care or skill; or
  - (ii) affect the Mortgagor's obligations under this Mortgage.

- (d) **Mortgagor holds building documents as bailee:** The Mortgagor must hold as bailee for the Mortgagee the building documents relating to the Works.

### 7.13 Insurance

- (a) **Obligation to insure:** The Mortgagor must:
- (i) insure and keep insured the Mortgaged Property for its full replacement value and on a reinstatement basis against loss or damage by fire, wind, storm, tempest, malicious damage, impact, explosion, theft, earthquake and such other risks as the Mortgagee may reasonably require from time to time; and
  - (ii) effect and keep current such public risk, workers' compensation and other insurances as the Mortgagee from time to time reasonably requires.
- (b) **Policy requirements:** Each insurance policy relating to the Mortgaged Property must:
- (i) be taken out with a reputable and substantial insurer approved by the Mortgagee (such approval not to be unreasonably withheld);
  - (ii) be taken out in the names of the Mortgagor and the Mortgagee and insure each of their respective interests;
  - (iii) contain a provision pursuant to which the insurer agrees that the policy cannot be varied, cancelled or terminated or renewal of the policy refused until the Mortgagee has received from the insurer 30 days notice in writing of the proposed variation, cancellation, termination or refusal to renew;
  - (iv) contain a provision pursuant to which the insurer acknowledges and agrees that a breach of any warranty, term or condition of the insurance policy by a person other than the Mortgagee will not invalidate the insurance as to the Mortgagee; and
  - (v) contain such other terms and conditions required by the Mortgagee.
- (c) **Policy documents:** The Mortgagor must give to the Mortgagee: a copy of each insurance policy; evidence of the currency of each insurance policy at the time each policy is renewed and at any other time upon demand by the Mortgagee; and, each document issued by an insurer in relation to an insurance policy.
- (d) **Protection of insurances:** The Mortgagor must:
- (i) punctually pay all moneys necessary for effecting and keeping current each insurance policy;
  - (ii) immediately notify the Mortgagee in writing of any event which gives rise or might give rise to a claim under any insurance policy;
  - (iii) immediately notify the Mortgagee in writing of the cancellation of any insurance policy for any reason;
  - (iv) comply with the requirements of each insurance policy;
  - (v) not do anything which may result in: the cancellation of any insurance policy; the refusal by an insurer to renew any insurance policy; an increase in the premium payable under any insurance policy; or, the loss of any right to claim under an insurance policy;

- (vi) not insure the Mortgaged Property except in the accordance with the provisions of this clause 7.13; and
  - (vii) not without the prior written consent of the Mortgagee vary, rescind, cancel or terminate any insurance policy.
- (e) **Mortgagor to assist in claims:** The Mortgagor must do everything that is necessary or desirable to recover any moneys that are or may be due in respect of any claim or potential claim under an insurance policy, including:
- (i) lodging a claim;
  - (ii) providing to the insurer or its agents any documents, information or evidence required by the insurer or its agents; and
  - (iii) subject to clause 7.13(f), instituting and maintaining any necessary or desirable proceedings to enforce recovery.
- (f) **Mortgagee to control claims:**
- (i) The Mortgagee has full power to make, enforce, sue for, recover, settle, compromise and give discharges for all claims and moneys that are payable in respect of any claim relating to the Mortgaged Property or any claim to compensation relating to any injury to any employee of the Mortgagee or any Receiver or Attorney suffered in the exercise or attempted exercise of any Right.
  - (ii) The Mortgagee is not obliged to exercise its rights under clause 7.13(f)(i). If the Mortgagee does exercise its rights under that clause, the Mortgagee may do so to the exclusion of the Mortgagor.
  - (iii) The Mortgagee's rights under clause 7.13(f)(i) may be exercised irrespective of whether the insurance policy covers the Mortgaged Property alone or includes other property or the insurance policy includes the Mortgagee as one of the insured.
- (g) **Application of insurance proceeds:**
- (i) At the option of the Mortgagee all moneys received in relation to any insurance policy on account of any claim may:
    - (A) be applied in and towards the payment or repayment of the Secured Moneys which are outstanding at that time whether or not then due or payable;
    - (B) be used to the extent necessary for the replacement, repair, reinstatement or rebuilding of the Mortgaged Property; or
    - (C) be retained by the Mortgagee and paid to the Mortgagor on a progressive basis as needed by the Mortgagor in connection with the replacement, repair, reinstatement or rebuilding of the Mortgaged Property.
  - (ii) If there are any surplus proceeds of insurance remaining in the hands of the Mortgagee after the application of the insurance proceeds in accordance with clause 7.13(g)(i), the Mortgagee must pay those surplus proceeds to the Mortgagor or the person otherwise entitled.

- (h) **Interpretation:** A reference in this clause 7.13 to an **insurance policy** means, as the context requires, an insurance policy which the Mortgagor is required to effect or has effected in relation to a risk (or which includes a risk) against which the Mortgagor must insure pursuant to this Mortgage.

#### 7.14 Encroachments

- (a) If any part of any improvement on the Mortgaged Property encroaches on any adjoining land the Mortgagor must, at the request of the Mortgagee:
- (i) rectify the encroachment;
  - (ii) obtain an easement to authorise the continued existence of the encroachment; or
  - (iii) obtain title to the land affected by the encroachment.
- (b) If any improvement on any adjoining land encroaches on the Mortgaged Property the Mortgagor must, at the request of the Mortgagee, remove that encroachment.
- (c) The Mortgagor must not without the prior written consent of the Mortgagee:
- (i) acknowledge that any part of any improvement on the Mortgaged Property constitutes an encroachment on any adjoining land; or
  - (ii) consent to, or grant any easement or licence for, the continued existence of any encroachment upon the Mortgaged Property.

#### 7.15 Compulsory acquisition

- (a) If the Mortgaged Property or any estate or interest in it is compulsorily acquired or there is any proposal to do so, the Mortgagor must:
- (i) do everything in relation to the acquisition or proposed acquisition as the Mortgagee reasonably requires;
  - (ii) give to the Mortgagee full particulars of any entitlement or prospective entitlement to compensation that the Mortgagor has or may have in relation to that acquisition or proposed acquisition;
  - (iii) not without the prior written consent of the Mortgagee, negotiate, settle, compromise, release or enforce any claims to compensation;
  - (iv) if directed by the Mortgagee, appeal against any compensation determination by a Government Body which the Mortgagee considers inadequate; and
  - (v) hold any compensation proceeds received by the Mortgagor in trust for the Mortgagee on account of the Secured Moneys which are outstanding irrespective of whether they are then due and payable.
- (b) Any moneys that are payable pursuant to any claim for compensation in relation to any compulsory acquisition of the Mortgaged Property may be applied by the Mortgagee in and towards payment of the Secured Moneys which are outstanding irrespective of whether they are then due and payable.
- (c) If the Mortgagor fails to do anything which it is obliged to do under clause 7.15(a), the Mortgagee may take such action in the name of the Mortgagor or the Mortgagee that the Mortgagee considers necessary to protect the interests of the Mortgagee.

## **7.16 After-acquired interest or land**

- (a) The Mortgagor must grant to the Mortgagee a Security Interest over:
  - (i) any estate or interest in the Mortgaged Property which is acquired by the Mortgagor after the date of this Mortgage being an estate or interest which by operation of Law is not included in this Mortgage; and
  - (ii) any land received by the Mortgagor by way of exchange in connection with the compulsory acquisition of any estate or interest in the Mortgaged Property by a Government Body.
- (b) A Security Interest which the Mortgagor is required to grant under clause 7.16(a) must be in a form and substance satisfactory to the Mortgagee.

## **7.17 Information and documents concerning Mortgaged Property**

The Mortgagor must give to the Mortgagee any information and documents which the Mortgagee requires concerning the Mortgaged Property.

---

# **8 Mortgagor's general undertakings**

## **8.1 Transaction Documents**

The Mortgagor must punctually observe and perform all of its obligations under each Transaction Document to which it is a party.

## **8.2 Notices to Mortgagee**

The Mortgagor must notify the Mortgagee in writing as soon as is practicable if any of the following events, matters, things or circumstances occur or exist:

- (a) any Default Event;
- (b) any Potential Default of which it becomes aware;
- (c) except as to a Permitted Encumbrance, any Encumbrance created or entered into by the Mortgagor affecting the Mortgaged Property;
- (d) any litigation, arbitration, tax claim, dispute or administrative proceedings commenced or threatened in writing which may have a Material Adverse Effect;
- (e) any proposed compulsory acquisition by a Government Body of the Mortgaged Property or any estate or interest in it;
- (f) any material breach of any Lease;
- (g) any summons, complaint, notice, hearing, order or determination in relation to a Licence;
- (h) any cancellation or suspension of a Licence or any circumstances, events, matters or things which would justify a cancellation or suspension of a Licence;
- (i) any refusal to renew a Licence;
- (j) any proposal to enter, or the entering of, any Mortgaged Property in any heritage register or environmental register maintained by a Government Body; or

- (k) any notice given or order made by a Government Body in respect of the condition or use of any Mortgaged Property or requiring the doing of any work in relation to any Mortgaged Property.

### 8.3 Term of undertakings

Except where the Mortgagee otherwise agrees in writing, each of the undertakings and obligations of the Mortgagor in this clause 8 must be complied with or observed by the Mortgagor until the later of:

- (a) the discharge of the Security Interest created by this Mortgage;
- (b) the payment or repayment of the Secured Moneys.

---

## 9 Default Events

### 9.1 Events

It is a Default Event whether or not within the control of the Mortgagor if:

- (a) **(non-payment)**: the Mortgagor fails to pay or repay any part of the Secured Moneys within five Business Days of the date when due and payable by the Mortgagor, other than where such failure is cured within five Business Days of the date when due for payment;
- (b) **(purpose)**: the Mortgagor applies any part of the Secured Moneys advanced to the Mortgagor for any purpose other than for the specified purpose (if any) for which it was advanced;
- (c) **(default)**: the Mortgagor fails to perform or observe any of its obligations under any Transaction Document (other than an obligation referred to in paragraph (a) or (b) above) and, if the failure is capable of remedy within 10 Business Days, it continues unremedied for 10 Business Days (or such longer period agreed in writing by the Mortgagee) after the Mortgagee has given written notice to the Mortgagor specifying the failure;
- (d) **(representation)**: any representation or warranty contained in any Transaction Document is, in a material respect, untrue, false or misleading when made or repeated;
- (e) **(Transaction Documents)**: all or any part of any Transaction Document is or becomes void, voidable, illegal, invalid, unenforceable or of limited or reduced force or effect or is claimed to be so by any Transaction Party;
- (f) **(priority and attachment)**: other than by any act of the Mortgagee, any Transaction Document:
  - (i) ceases to have the priority that it purports to have under this Mortgage or any other Transaction Document;
  - (ii) for the purposes of the PPSA, ceases or fails to attach to any collateral that is intended to be the subject of that Transaction Document; or
  - (iii) ceases to secure the payment of the money or the performance of the obligations that it purports to secure;

- (g) **(registration):**
- (i) this Mortgage cannot be registered or is refused registration under the Titles Act;
  - (ii) a requisition is issued by or on behalf of the Recorder of Titles which affects (directly or indirectly) the registration of this Mortgage in accordance with the Titles Act and that requisition is not withdrawn or satisfied within five Business Days of the Mortgagee notifying the Mortgagor of the requisition; or
  - (iii) a Transaction Document (that the Mortgagee requires to be registered) cannot be registered in accordance with, or is refused registration under, any applicable Law relating to the registration of Transaction Documents of that type;
- (h) **(distress/execution):** any distress or execution for an amount exceeding \$50,000 or its equivalent in another currency is levied or enforced upon or against any assets of any Transaction Party and that distress or execution is not withdrawn or satisfied within five Business Days of its levy or issue;
- (i) **(judgment):** a final judgment in an amount exceeding \$50,000 or its equivalent in another currency is obtained against any Transaction Party and is not satisfied within five Business Days of it becoming final;
- (j) **(cease business):** any Transaction Party ceases or threatens to cease to carry on its business without the prior consent in writing of the Mortgagee;
- (k) **(cross default):**
- (i) any default event (however described) occurs under any Transaction Document;
  - (ii) any obligation of any Transaction Party for the payment or repayment of any present or future debt or monetary liability:
    - (A) becomes due and payable, or capable of being declared due and payable, prior to the due date for payment or repayment owing to default; or
    - (B) is not paid or repaid on the due date for payment or repayment;
  - (iii) any Security Interest is enforced, or becomes capable of being enforced, against any property of any Transaction Party;
  - (iv) any Transaction Party fails to make a required payment under any Guarantee that is or becomes enforceable against that Transaction Party;
- (l) **(compulsory acquisition):** the Mortgaged Property, or any estate or interest in it, is by operation of Law compulsorily acquired by any person;
- (m) **(damage):** any substantial part of the Mortgaged Property is damaged or destroyed;
- (n) **(material adverse change):** anything occurs which in the opinion of the Mortgagee may have a Material Adverse Effect;
- (o) **(Mortgaged Property):** at any time the Mortgaged Property is affected by:

- (i) any proposed change to the zoning or the permitted use of the Mortgaged Property;
- (ii) any proposal to change or introduce any planning scheme;
- (iii) any proposal by a Government Body to compulsorily acquire the Mortgaged Property or any estate or interest in it;
- (iv) any proposal to widen any road or construct any new roads adjacent to or near the Mortgaged Property;
- (v) flooding, landslip, mining subsidence or tidal inundation; or
- (vi) any contamination,

and as a result of that event, in the opinion of the Mortgagee, the value of the Mortgaged Property is reduced;

- (p) **(entry on register)**: the Mortgaged Property is entered on any environmental register or heritage register, and as a result, in the opinion of the Mortgagee, the value of the Mortgaged Property is reduced;
- (q) **(Transaction Party: corporation)**: in relation to a Transaction Party that is a corporation:
  - (i) **(change of control)**: except with the prior written consent of the Mortgagee, any change occurs in the control (as defined in section 50AA of the Corporations Act) of that Transaction Party after the date it became a Transaction Party;
  - (ii) **(change to constitution)**: the constitution for that Transaction Party is amended without the prior written consent of the Mortgagee;
  - (iii) **(investigation)**: any person is appointed under any applicable Law to investigate the affairs of that Transaction Party;
  - (iv) **(deregistration)**: that Transaction Party is deregistered, or steps are taken to deregister it, under the Corporations Act;
  - (v) **(resolution for winding up)**: any steps are taken to pass, or there is passed, a resolution for the winding up or dissolution of that Transaction Party (other than for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Mortgagee);
  - (vi) **(winding up)**: an application (other than a frivolous or vexatious application) or order is sought or made in any court for the winding up or dissolution of that Transaction Party (other than for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Mortgagee);
  - (vii) **(appointments)**: that Transaction Party becomes an externally administered body corporate (as defined in section 9 of the Corporations Act) or a person becomes a controller (as defined in section 9 of the Corporations Act) of any of its property;
  - (viii) **(insolvency)**: that Transaction Party:
    - (A) is unable to pay its debts as and when they fall due for payment or determines that it is insolvent or is likely to become insolvent at some future time;

- (B) fails to comply with any statutory demand within the meaning of section 459F of the Corporations Act;
- (C) convenes a meeting of its creditors or proposes or enters into any scheme of arrangement, reconstruction or composition with its creditors or any of them;
- (D) seeks protection from its creditors under any applicable Law;
- (ix) **(analogous circumstances)**: anything analogous or having a substantially similar effect to any of the events specified in this clause 9.1(q) occurs under any applicable Law of another jurisdiction; or
- (r) **(Transaction Party: natural person)**: in respect of a Transaction Party that is a natural person, that Transaction Party:
  - (i) **(death)**: dies;
  - (ii) **(legal capacity)**: was not at the time of entering any Transaction Document, or at any later time ceases to be, of full legal capacity;
  - (iii) **(insolvent)**: becomes an insolvent under administration as defined in section 9 of the Corporations Act or any action is taken by any person that could result in that event; or
  - (iv) **(health)**: was at the time of entering into any Transaction Document, or at any later time becomes, of unsound mind or subject to any Laws relating to mental health.

## 9.2 Interpretation

- (a) Nothing in clause 9.1 limits the generality of any thing else in it.
- (b) A Default Event or Potential Default subsists or continues until either:
  - (i) it is remedied to the Mortgagee's satisfaction before any Rights relating to that Default Event or Potential Default are exercised; or
  - (ii) it is waived by the Mortgagee in writing in accordance with this Mortgage.

---

## 10 Enforcement by Mortgagee

### 10.1 General

At any time after a Default Event has occurred, the Mortgagee may (despite any delay or previous waiver) do all or any of the following:

- (a) declare the Secured Moneys to be immediately due and payable (including any moneys contingently due or payable) at which time the Secured Moneys become immediately due and payable;
- (b) exercise any Right in relation to a Transaction Document;
- (c) exercise any other Right conferred by Law.

### 10.2 Statutory powers

- (a) The Mortgagee may exercise the power of sale conferred by section 78 of the Titles Act.

- (b) The Mortgagor and the Mortgagee agree that five Business Days is expressly limited as the period of time for which the default mentioned in section 77 of the Titles Act must be continued prior to the service of the notice mentioned in that section and that five Business Days is also limited as the period for which the default must continue after the date of the notice mentioned in section 77 before the power of sale conferred by section 78 of the Titles Act can be exercised.
- (c) An extended power of sale may be exercised.
- (d) The Mortgagee when in possession shall have extended powers of leasing and granting options.

### 10.3 Additional Rights

At any time after a Default Event has occurred the Mortgagee has the power to do any of the following things:

- (a) **(take possession)**: to enter into possession of the Mortgaged Property and enter into receipt of the rents and profits of the Mortgaged Property;
- (b) **(manage)**: to manage the Mortgaged Property;
- (c) **(maintain or improve Mortgaged Property)**: to do anything which in the opinion of the Mortgagee is necessary or appropriate to maintain, protect, improve or make the Mortgaged Property more saleable, including:
  - (i) demolishing, rebuilding, altering, adding to, repairing, painting or cleaning any building, improvement, erections or structure on or forming part of the Mortgaged Property;
  - (ii) erecting, constructing or completing any works or earthworks on the Mortgaged Property whether or not in accordance with any existing design;
- (d) **(obtain income)**: to do anything which in the opinion of the Mortgagee is necessary or appropriate to obtain income from the Mortgaged Property;
- (e) **(Lease)**: to:
  - (i) enforce any Lease;
  - (ii) perform the obligations, and discharge the liabilities, of the Mortgagor under any Lease;
  - (iii) accept the surrender of, or determine, any Lease;
  - (iv) vary, amend or extend any Lease;
  - (v) enter into any lease, agreement for lease, tenancy or licence in relation to the Mortgaged Property or renew any Lease:
    - (A) on any terms and conditions that the Mortgagee thinks fit;
    - (B) for any period of time;
    - (C) for such rent or fee as the Mortgagee thinks fit;
    - (D) in connection with the sale, lease or licence of any other property by any person;
- (f) **(sale)**: to sell the Mortgaged Property;

- (i) to any person;
- (ii) by private treaty, public auction, tender or otherwise, and if by public auction or tender, subject to a reserve price determined by the Mortgagee;
- (iii) on such terms and conditions as the Mortgagee thinks fit;
- (iv) with or without any special conditions or stipulations as to title or any other matter;
- (v) for a consideration:
  - (A) payable in cash in any currency;
  - (B) consisting of or including something other than money; or
  - (C) the payment of which is deferred in whole or in part, either with or without interest and either secured or unsecured;
- (vi) in one lot or in separate parcels;
- (vii) together with the sale of any other property by any other person;
- (g) **(buy in)**: to buy in, rescind or vary any agreement for the sale of the Mortgaged Property and to resell the Mortgaged Property without being responsible for any loss;
- (h) **(grant options)**: to grant to any person options and rights of first refusal to purchase the Mortgaged Property on any terms that the Mortgagee thinks fit;
- (i) **(business)**: to:
  - (i) carry on or concur in carrying on or cease to carry on any business on or from the Mortgaged Property;
  - (ii) commence to carry on any business on or from the Mortgaged Property, including any business not previously carried on by the Mortgagor;
- (j) **(more saleable)**: to do anything which in the opinion of the Mortgagee is necessary or desirable to make the Mortgaged Property more saleable;
- (k) **(borrowings and security)**: to:
  - (i) borrow any money or otherwise raise any financial accommodation in its name or in the name of the Mortgagor or on behalf of the Mortgagor from any person which in the opinion of the Mortgagee is required or desirable to facilitate the exercise or attempted exercise of any Right by the Mortgagee or any Receiver or Attorney;
  - (ii) secure any moneys or financial accommodation obtained pursuant to clause 10.3(k)(i) by a Security Interest over the Mortgaged Property ranking in priority to, concurrently with or after this Mortgage;
- (l) **(fixtures)**: to sever fixtures belonging to the Mortgagor and comprising any part of the Mortgaged Property and sell those fixtures separately from any other part of the Mortgaged Property;
- (m) **(personal property)**: in relation to any personal property on the Mortgaged Property which is not subject to this Mortgage, to:

- (i) remove the personal property from the Mortgaged Property and store it with any person, including the Mortgagee, at the cost of and in the name of the Mortgagor for such period as the Mortgagee thinks fit; and
- (ii) upon five Business Days' notice in writing to the Mortgagor sell that personal property in the name of and on behalf of the Mortgagor on and subject to such terms and conditions as the Mortgagee thinks fit and set the proceeds of sale off against the Secured Moneys;
- (n) (**insure**): to insure the Mortgaged Property;
- (o) (**compromises**): to make or accept any compromise or arrangement with any person;
- (p) (**Encumbrances**): to grant, create, release, vary or seek the cancellation of any Encumbrance affecting the Mortgaged Property;
- (q) (**surrender**): to surrender or transfer any Mortgaged Property to any Government Body for any purpose and with or without compensation;
- (r) (**exchange**): to exchange the Mortgaged Property with any person for any other estate or interest in any land:
  - (i) whether or not of equal value;
  - (ii) with or without receiving or giving any other consideration for the purpose of equalising the value of the exchange;
- (s) (**additional property**): to acquire in the name of the Mortgagor and on its behalf or in the name of the Mortgagee any property or any estate or interest in any property (including land) which:
  - (i) on its acquisition forms part of the Mortgaged Property;
  - (ii) in the case of personal property, is intended to be attached to the Mortgaged Property as a fixture; or
  - (iii) which is necessary or desirable in the opinion of the Mortgagee to make the Mortgaged Property more saleable;
- (t) (**Security Interest**): in relation to any land acquired in the name of the Mortgagor pursuant to the exercise of any Right, to grant to the Mortgagee a Security Interest over that land in a form and substance satisfactory to the Mortgagee for the purposes of securing the payment or repayment of the Secured Moneys;
- (u) (**subdivision**): to subdivide, consolidate or otherwise develop the Mortgaged Property and for that purpose:
  - (i) procure the preparation, approval or registration of any plan of subdivision (including a stratum plan) or consolidation;
  - (ii) design and construct any works or earthworks (including roads) and install or connect any services;
  - (iii) dedicate any part of the Mortgaged Property for any public purpose or make contributions in lieu of a dedication;
  - (iv) grant, create, release, vary or seek the cancellation of any Encumbrance affecting the Mortgaged Property;

- (v) do all such acts and things, including signing any document on behalf of the Mortgagor, which is necessary for such subdivision, consolidation or development to be effected;
- (v) (**agreements**): to vary, replace, rescind or terminate any agreement relating to the Mortgaged Property to which it or the Mortgagor is a party;
- (w) (**employ**): to employ, engage or discharge any person for the purpose of exercising any of the Mortgagee's Rights;
- (x) (**receipts**): to give effectual receipts for any moneys or property;
- (y) (**conduct legal proceedings**): to commence, defend, prosecute, settle, discontinue or compromise any litigation, administrative or arbitral proceedings relating to:
  - (i) the Mortgaged Property; or
  - (ii) any act or transaction relating to the exercise or attempted exercise of any Right;
- (z) (**Mortgagor's ability**): to do anything that the Mortgagor:
  - (i) could do in respect of the Mortgaged Property;
  - (ii) is obliged to do under or pursuant to this Mortgage;
- (aa) (**delegate**): to delegate to any person any Right;
- (bb) (**incidental**): to do anything that is incidental or conducive to the exercise of any Right.

#### 10.4 Discharge of prior Security Interests

- (a) **Power:** At any time after a Default Event has occurred, the Mortgagee may discharge by payment or take a transfer of any Security Interest over the Mortgaged Property that ranks in priority to this Mortgage.
- (b) **No enquiry:**
  - (i) The Mortgagee is not bound to enquire whether the moneys claimed to be owing or payable under any prior Security Interest are actually owing or payable.
  - (ii) The holder of any prior Security Interest is not bound to enquire whether any moneys are secured by this Mortgage.
- (c) **Information:** The Mortgagor irrevocably authorises the holder of any prior Security Interest to provide any information to the Mortgagee that the Mortgagee requires in relation to any prior Security Interest.
- (d) **Secured Moneys:** Any amounts paid by the Mortgagee to discharge any prior Security Interest shall form part of the Secured Moneys.

---

## 11 Receiver – appointment and powers

### 11.1 Appointment of Receiver

- (a) **Power to appoint:** At any time after a Default Event has occurred the Mortgagee may appoint any person or persons (and if more than one then either jointly or

jointly and severally) to be a receiver or receiver and manager of the whole, any part or any different parts of the Mortgaged Property.

- (b) **Replacement:** The Mortgagee may remove any Receiver and in the case of removal, disqualification, retirement or death of a Receiver, appoint another in his place.
- (c) **Remuneration:** The Mortgagee may fix or vary the remuneration of a Receiver.

## 11.2 Termination

The Mortgagee may at any time terminate the appointment of a Receiver.

## 11.3 Agency

- (a) Subject to clause 11.3(b), every Receiver is the agent of the Mortgagor.
- (b) A Receiver is the agent of the Mortgagee if:
  - (i) the Mortgagee determines that a Receiver is to act as the agent of the Mortgagee; or
  - (ii) by operation of Law a Receiver cannot act or continue to act as the agent of the Mortgagor.
- (c) The Mortgagor is responsible for the acts, omissions, defaults and remuneration of a Receiver.

## 11.4 Rights

Subject to any specific exclusions contained in the terms of appointment, a Receiver has the power to do all or any of the following things:

- (a) **(law):** to exercise any of the Rights conferred upon receivers and receivers and managers pursuant to any applicable Law including the Corporations Act;
- (b) **(Mortgagee's Rights):** to exercise any of the Rights of the Mortgagee under or in relation to this Mortgage (except the right to demand repayment of the Secured Moneys or appoint a Receiver);
- (c) **(further powers):** to exercise any other power which the Mortgagor confers on the Receiver by written notice to that Receiver;
- (d) **(Mortgagor's ability):** to do anything that the Mortgagor:
  - (i) is permitted to do in respect of the Mortgaged Property; or
  - (ii) is obliged to do under or pursuant to this Mortgage or any other Transaction Document;
- (e) **(delegate):** to delegate to any person any Right of the Receiver; and
- (f) **(incidental):** to do anything that is incidental or conducive to the exercise of any Right of the Receiver.

---

## **12 Application and receipt of money**

### **12.1 Application of money**

Subject to any applicable Law to the contrary, all moneys received by the Mortgagee, a Receiver or an Attorney on the enforcement of the Security Interests created by this Mortgage must be applied (after satisfaction of any claims taking priority to this Mortgage) in the following order:

- (a) firstly, towards payment of that part of the Secured Moneys being any costs, charges, outgoings and expenses incurred in or incidental to the exercise or performance or attempted exercise or performance of any Right of the Mortgagee, a Receiver or an Attorney;
- (b) secondly, towards payment of that part of the Secured Moneys being the remuneration payable to a Receiver;
- (c) thirdly, towards payment of the balance of the Secured Moneys and appropriated as between different parts of the Secured Moneys as determined by the Mortgagee; and
- (d) fourthly, to the extent not otherwise applied, to the Mortgagor or any other person entitled to receive them.

### **12.2 Money actually received**

In applying any moneys toward satisfaction of the Secured Moneys, the Mortgagor is to be credited with only so much of those moneys as are actually received by the Mortgagee. The credit dates from the time of receipt.

### **12.3 Contingent debts**

- (a) If at the time any moneys are available for distribution in accordance with clause 12.1 any part of the Secured Moneys is contingently owing or payable to the Mortgagee, the Mortgagee or a Receiver may retain an amount equal to the amount contingently owing or payable or any part of it to secure payment of the contingent amount should it become actually due and payable.
- (b) The Mortgagee or a Receiver must place any amount retained pursuant to clause 12.3(a) on short term interest bearing deposit with a bank until that amount is dealt with in accordance with clauses 12.3(c) and 12.3(d).
- (c) An amount retained under clause 12.3(a) together with any accrued interest must be paid to the Mortgagee to the extent necessary to satisfy any contingent amount owing to the Mortgagee which forms part of the Secured Moneys and which subsequently becomes actually due and payable.
- (d) If:
  - (i) a surplus remains after applying a retained amount in accordance with clause 12.3(c); or
  - (ii) an amount contingently owing or payable to the Mortgagee does not become actually due and payable and ceases to be contingently owing or payable in the opinion of the Mortgagee,

that retained amount and accrued interest or the balance, is to be distributed in accordance with clause 12.1.

## **12.4 Receipts**

- (a) The receipt of the Mortgagee for any moneys payable to or received by the Mortgagee under this Mortgage exonerates the payer from all liability to enquire whether the Mortgagee is entitled to receive those moneys.
- (b) Every receipt of the Mortgagee shall as to the moneys paid or expressed to be received in such receipt, effectually discharge the payer from:
  - (i) being concerned to see to the application, or being answerable or accountable for any loss or misapplication, of the moneys which are the subject of that receipt; or
  - (ii) any further liability in relation to the amount specified in the receipt.

## **12.5 Surplus moneys**

Surplus moneys available for distribution under clause 12.1(d) do not bear interest pending distribution.

---

## **13 Power of attorney**

### **13.1 Appointment**

The Mortgagor irrevocably appoints the Mortgagee, each Authorised Representative of the Mortgagee and each Receiver severally to be its attorney.

### **13.2 Powers of an Attorney**

After a Default Event occurs, an Attorney may in the name of the Mortgagor:

- (a) do anything which the Mortgagor may lawfully authorise an attorney to do in relation to the Mortgaged Property;
- (b) perform any of the Mortgagor's obligations under any Transaction Document;
- (c) execute any further Security Interest in relation to the Mortgaged Property;
- (d) do anything (including executing any deed, instrument, document or agreement) which in the opinion of the Mortgagee or any Receiver is necessary or expedient:
  - (i) to enable the exercise of or give effect to any Right;
  - (ii) for more satisfactorily securing to the Mortgagee the payment or repayment of the Secured Moneys; or
  - (iii) in relation to the Mortgaged Property;
- (e) do anything (including executing any deed, instrument, document or agreement) which the Mortgagor is authorised, permitted or empowered to do under any deed, instrument, document or agreement concerning the Mortgaged Property;
- (f) execute deeds of release, assignment or composition concerning the Mortgaged Property;
- (g) appoint another person as sub-attorney for any period and to revoke that appointment; or
- (h) delegate its powers to any person for any period and to revoke a delegation.

### **13.3 Ratification**

The Mortgagor agrees to ratify and confirm any exercise or attempted exercise by an Attorney of any Right conferred on that Attorney.

### **13.4 Conflict**

An Attorney may exercise or concur in exercising a Right as an attorney even if the Attorney has a conflict of duty or interest in the means or the result of an exercise of a Right.

### **13.5 Consideration**

The power of attorney is granted for valuable consideration (receipt of which is acknowledged by the Mortgagor) and to secure the performance of the obligations of the Mortgagor under this Mortgage and to secure any proprietary interest of the Mortgagee.

---

## **14 Protection of third parties**

### **14.1 No duty to enquire**

A person dealing with the Mortgagee, a Receiver or an Attorney in relation to any sale, disposal or dealing made or purporting to be made in the exercise of any Right, or a person to whom is tendered for registration a document executed by the Mortgagee, a Receiver or an Attorney, is not:

- (a) bound or concerned to enquire whether this Mortgage has become enforceable, or whether the Receiver or Attorney was properly appointed or otherwise as to the propriety or regularity of the exercise of any Right in relation to any such sale, disposal or dealing; or
- (b) affected by an express, implied or constructive notice that the exercise of any Right in relation to any such sale, disposal or dealing was or is unnecessary or improper.

### **14.2 Authorisation**

For the purposes of further protecting any person or the title of any person that is protected by clause 14.1, the Mortgagor agrees that every act, matter or thing which is done in the exercise or purported exercise of a Right is valid and taken to be authorised by the Mortgagor and this Mortgage notwithstanding that the exercise or purported exercise of the Right is invalid, improper or irregular as between the Mortgagee and the Mortgagor.

---

## **15 Protection of Mortgagee and its Rights**

### **15.1 Protection of Mortgagee, Receiver and Attorney**

The Mortgagee, each Receiver and each Attorney are not liable for any loss or damage caused by:

- (a) any omission or delay in the exercise of any Right; or
- (b) the exercise or attempted exercise of any Right except where the loss or damage arises from fraud or gross negligence on the part of the Mortgagee, the Receiver or an Attorney in the exercise or attempted exercise of that Right.

## **15.2 Mortgagee in possession**

- (a) The exercise of any Right by the Mortgagee, a Receiver or an Attorney does not render the Mortgagee, that Receiver or that Attorney:
  - (i) liable to account as mortgagee in possession; or
  - (ii) responsible or answerable for any act or omission for which a Mortgagee in possession might be liable.
- (b) If the Mortgagee has entered into possession of the Mortgaged Property, the Mortgagee may give up that possession at any time but without prejudice to the Mortgagee's power to enter into possession at a later time.
- (c) The obligations of the Mortgagor under this Mortgage are not affected by the Mortgagee, a Receiver or an Attorney entering into possession of the Mortgaged Property.

## **15.3 Notice of exercise of rights**

The Mortgagee, any Receiver and any Attorney are not required:

- (a) to give notice of this Mortgage to any debtors of the Mortgagor or any other person;
- (b) to take any steps or proceedings to enforce payment of any moneys payable to the Mortgagor; or
- (c) to obtain the consent of the Mortgagor to any exercise of a Right.

## **15.4 Statutory powers**

- (a) The Mortgagee is not required to give any notice to any person or allow the expiration of any time prior to exercising any Right, and to the fullest extent that it is lawful to do so, the Mortgagor and the Mortgagee dispense with and agree to negative any such requirement to do so pursuant to any legislative provision.
- (b) If a legislative provision stipulates that a notice must be given or a period of time allowed to expire prior to exercising a Right, and that statutory provision cannot be dispensed with, excluded or negated, then:
  - (i) that notice must be given; and
  - (ii) any mandatory or minimum period of time must be allowed to expire, and if no minimum period is prescribed, then a period of two days is fixed as the period of time which must expire.

## **15.5 Moratorium provisions**

- (a) Any legislative provision which at any time, directly or indirectly:
  - (i) defeats, extinguishes, lessens or otherwise varies or affects in favour of the Mortgagor any of its obligations under any Transaction Document to which it is a party; or
  - (ii) suspends, postpones or otherwise prevents or prejudicially affects the exercise of any Right by the Mortgagor, any Receiver or any Attorney,is negated and excluded from its application to the fullest extent permitted by Law.

- (b) If at any time the interest charges or fees payable by the Mortgagor in relation to any Secured Moneys contravenes any legislative provision applicable to a Transaction Document which:
  - (i) is not excluded or negated pursuant to clause 15.5(a);
  - (ii) would render a Transaction Document void or unenforceable; and
  - (iii) applies because the interest charges or fees exceed the maximum amount permitted under that legislative provision,

then, in relation to those Secured Moneys, the rate of interest or fees charged is to be reduced to the maximum amount as will comply with the terms of that legislative provision so as not to affect the validity or enforceability of that Transaction Document.

### **15.6 Continuing security**

This Mortgage:

- (a) is a continuing security;
- (b) remains in full force and effect until:
  - (i) the Secured Moneys have been paid to the Mortgagee in full;
  - (ii) the Mortgagor has fully performed all of its obligations to the Mortgagee under the Transaction Documents; and
  - (iii) the Security Interest created by this Mortgage has been discharged by the Mortgagee in accordance with clause 3.1;
- (c) applies to the present and future balance of the Secured Moneys; and
- (d) is not wholly or partially discharged by the payment of any of the Secured Moneys, any settlement of account or the occurrence of any other event, circumstance, matter or thing.

### **15.7 No merger of security**

- (a) The Mortgagee's right to payment of the Secured Moneys arising in any way does not merge with the Mortgagor's undertaking to pay the Secured Moneys under this Mortgage.
- (b) Nothing in this Mortgage merges, extinguishes, postpones, lessens or otherwise prejudicially affects:
  - (i) any other Security Interest or Guarantee in favour of the Mortgagee at any time including any other Security Interest over the Mortgaged Property or any Collateral Security; or
  - (ii) any Right that the Mortgagee may have in relation to the Mortgagor or any other person.
- (c) No other Security Interest or Guarantee held by the Mortgagee merges, extinguishes, postpones, lessens or otherwise prejudicially affects this Mortgage or a Right.
- (d) Any judgment or order that the Mortgagee obtains in relation to the Secured Moneys is Mortgaged Property to this Mortgage, and this Mortgage does not merge in that judgment or order.

## **15.8 Exercise of rights**

The Mortgagee, a Receiver or an Attorney may exercise any Right even if a negotiable instrument, security, contract or other obligation relating to the Secured Moneys is still current or has not fallen due.

## **15.9 No marshalling**

The Mortgagee is not under any obligation to marshal in favour of the Mortgagor any Security Interest or any of the moneys or assets that the Mortgagee may be entitled to receive or have a claim upon.

## **15.10 Completion of blanks**

The Mortgagee, any Authorised Representative of the Mortgagee, any Receiver or an Attorney may fill in any blanks in this Mortgage and complete in favour of the Mortgagee or any person any document at any time executed by or on behalf of the Mortgagor in blank and deposited with the Mortgagee under or as Mortgaged Property security to this Mortgage.

## **15.11 Increase in financial accommodation**

The Mortgagee may at any time increase the financial accommodation provided under any Transaction Document or otherwise provide further financial accommodation.

## **15.12 Determination**

Where the Mortgagee is required or entitled to form or hold an opinion or view under or in relation to this Mortgage, that opinion or view may be formed or held on behalf of the Mortgagee or by any Authorised Representative of the Mortgagee.

## **15.13 Future accommodation**

- (a) If a Default Event occurs, the Mortgagee may in its absolute discretion decline or refuse to advance any moneys or provide any financial accommodation which is intended to form part of the Secured Moneys but which has not been advanced or provided prior to that Default Event occurring.
- (b) Nothing in clause 15.3(a) imposes any obligation on the Mortgagee to decline or refuse to advance any moneys or provide any financial accommodation on security of this Mortgage where a Default Event has occurred or is subsisting.

## **15.14 Performance of the Mortgagor's obligations**

If the Mortgagor defaults in fully and punctually performing any obligation contained or implied in any Transaction Document, the Mortgagee may, without prejudice to any Right, do all things necessary or desirable in the opinion of the Mortgagee to make good or attempt to make good that default to the satisfaction of the Mortgagee.

## **15.15 Mortgagor to assist exercise of the Rights**

- (a) The Mortgagor must do everything (including executing any document) that the Mortgagee, any Receiver or an Attorney considers necessary or desirable to assist any of them to exercise any Right.
- (b) The Mortgagor must not do anything that may prevent or hinder the exercise of any Right by the Mortgagee, any Receiver or an Attorney.

---

## **16 Indemnities**

### **16.1 Indemnities to Receiver and Attorney**

The Mortgagee may give such indemnities to any Receiver or Attorney in relation to the exercise of any Right as the Mortgagee thinks fit. Moneys paid pursuant to any such indemnity become part of the Secured Moneys.

### **16.2 Mortgagor's general indemnity**

The Mortgagor indemnifies the Mortgagee against any claim, action, proceeding, liability, damage, loss, cost, charge, expense, outgoing or payment which the Mortgagee pays, incurs, suffers or is liable for in respect of or in relation to any of the following:

- (a) any Default Event or Potential Default;
- (b) the non-exercise, attempted exercise, exercise or any delay in the exercise of any Right;
- (c) any insurance policy or a claim under an insurance policy in relation to the Mortgaged Property;
- (d) any act or omission of the Mortgagor, or any of its employees, agents, contractors or tenants (other than the Mortgagee);
- (e) the sale or storage of or any loss of or damage to any personal property situated on or removed by the Mortgagee from the Mortgaged Property;
- (f) any intended or actual compulsory acquisition of the Mortgaged Property or any estate or interest in it; or
- (g) any indemnity given by the Mortgagee to a Receiver or an Attorney.

### **16.3 Foreign currency indemnity**

- (a) If a judgment, order or proof of debt in relation to any of the Secured Moneys is expressed in a currency other than the Specified Currency, the Mortgagor must indemnify the Mortgagee against:
  - (i) any difference arising from converting an amount received in the other currency to the Specified Currency if the rate of exchange, at which the Mortgagee can reasonably convert the other currency into the Specified Currency at the time payment is received in the other currency pursuant to that judgment, order or proof of debt, is less favourable than the rate of exchange used for the purpose of calculating the amount of the judgment (or the claim to which the judgment relates), order or acceptance of proof of debt in the other currency; and
  - (ii) the costs of conversion.
- (b) The Mortgagor acknowledges that it may be necessary to convert the other currency through more than one currency to convert the other currency to the Specified Currency.

### **16.4 Independence and survival of indemnities**

Each of the indemnities in clauses 16.2 and 16.3 is a continuing obligation, separate and independent from the other obligations of the Mortgagor and survives the termination of any Transaction Document. An indemnity in this Mortgage is not to be limited by reference to any other indemnity.

---

## 17 Strata titles

### 17.1 Application

This clause 17 applies if the Mortgaged Property is or includes a lot described in a strata plan registered under the Strata Act.

### 17.2 Interpretation

Unless the context otherwise requires, words and phrases which have a defined meaning in the Strata Act have the same meaning when used in this clause 17.

### 17.3 Strata title obligations

The Mortgagor:

- (a) **(no amendments)**: except with the Mortgagee's prior written consent, must not apply for, consent or agree to, or vote in favour of any resolution for, any amendments to the strata plan or the by-laws;
- (b) **(compliance with by-laws and Strata Act)**:
  - (i) must comply with the by-laws for the strata plan;
  - (ii) must comply with its obligations under the Strata Act;
  - (iii) must ensure that the body corporate complies with its obligations under the Strata Act; and
  - (iv) must take reasonable steps to ensure that the owners of other lots created by the strata plan comply with the by-laws and their obligations under the Strata Act if non compliance would adversely affect the Mortgaged Property;
- (c) **(mortgage protection insurance)**: if required by the Mortgagee, in accordance with section 102 of the Strata Act, must insure the Mortgaged Property for the benefit of the Mortgagee with an insurer acceptable to the Mortgagee for an amount greater than or equal to the Secured Moneys (or such lesser amount as the Mortgagee may agree in writing) and must otherwise comply with the provisions of clause 7.13 in relation to that insurance to the extent those provisions are capable of application to it;
- (d) **(information)**: must provide to the Mortgagee all information which the Mortgagee requests relating to the strata scheme;
- (e) **(obligation to vote as directed)**: must vote or abstain from voting as directed by the Mortgagee in respect of any matter which requires a unanimous resolution of the body corporate;
- (f) **(notice of meetings)**: at the request of the Mortgagee, must give to the Mortgagee not less than five Business Days notice in writing of any proposed meeting of the body corporate; and
- (g) **(proxy)**: must give to such person as is nominated by the Mortgagee from time to time, a valid proxy (in a form and substance satisfactory to the Mortgagee) to attend and vote at meetings of the body corporate (to the exclusion of the Mortgagor).

## 17.4 Authority to obtain information

- (a) The Mortgagor irrevocably authorises the Mortgagee, each of the Mortgagee's Authorised Representatives and each Receiver:
  - (i) to inspect the by-laws for the time being in force; and
  - (ii) to obtain from the body corporate all information and copies of any document relating to the strata scheme.
- (b) The Mortgagor irrevocably authorises the body corporate to supply to the Mortgagee any information or document which the Mortgagee is authorised to obtain under clause 17.4(a).

## 17.5 Strata title Default Events

It is a Default Event whether or not within the control of the Mortgagor if:

- (a) **(resolution)**: the body corporate passes a unanimous resolution and the Mortgagee did not consent to the Mortgagor voting in favour of that resolution before it was passed;
- (b) **(insurance)**: the body corporate fails to maintain appropriate and adequate insurances;
- (c) **(destruction)**: any building containing the Mortgaged Property is substantially damaged or destroyed; or
- (d) **(security)**: any other act, event, circumstance, matter or thing occurs in relation to the strata scheme which in the opinion of the Mortgagee diminishes or prejudices the security constituted by this Mortgage.

---

## 18 Third party provisions

### 18.1 Liability not affected

- (a) The liability of the Mortgagor under this Mortgage (whether as mortgagor, principal debtor, guarantor, indemnifier or in any other capacity) and the Rights of the Mortgagee are not affected, released, discharged or extinguished by anything which might otherwise have that effect, including any of the following:
  - (i) the Mortgagee granting any time, waiver or other indulgence or consideration to, or compounding or compromising with, any person in any way;
  - (ii) the Mortgagee becoming a party to, or being bound by, any compromise, assignment of property, scheme of arrangement, composition of debts, scheme of reconstruction or administration in respect of any property or any person;
  - (iii) any act, omission, delay, laches, default, mistake or acquiescence on the part of the Mortgagee;
  - (iv) any agreement (including any Transaction Document, Security Interest or Guarantee) or transaction made or entered into, between the Mortgagee and any person at any time;
  - (v) any Security Interest, Guarantee or judgment being granted in favour of the Mortgagee at any time;

- (vi) any agreement (including any Transaction Document, Security Interest or Guarantee), transaction, judgment, document (including a negotiable instrument), obligation or liability:
  - (A) not being executed or effectively executed by, or binding on, any person; or
  - (B) being or becoming lost, impaired, invalid, void, voidable or unenforceable (whether in whole or in part);
- (vii) the Mortgagee failing to take or obtain any agreement (including any Transaction Document, Security Interest or Guarantee), judgment or document (including a negotiable instrument) or to enter into any transaction;
- (viii) any dealing in any way with any agreement (including any Transaction Document, Security Interest or Guarantee), transaction, judgment or document (including a negotiable instrument) including by releasing, discharging, abandoning, varying, amending, replacing, renewing, assigning, novating or extending it (whether in whole or in part);
- (ix) the release or discharge by the Mortgagee or by operation of Law of:
  - (A) any property or any person from any Security Interest;
  - (B) any person from any obligation or liability including an obligation or liability in relation to pay any of the Secured Moneys;
- (x) any covenant or agreement by the Mortgagee not to sue any person in relation to any obligation or liability to pay any of the Secured Moneys or any other moneys;
- (xi) the Mortgagee failing to enforce or fully enforce against any person any agreement (including any Transaction Document, Security Interest or Guarantee), transaction, judgment, document (including a negotiable instrument), obligation or liability;
- (xii) any moratorium or other suspension of a Right;
- (xiii) the Mortgagee exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any Right;
- (xiv) the Mortgagee failing to preserve the liability of any person under any agreement (including any Transaction Document, Security Interest or Guarantee), transaction, judgment or document (including a negotiable instrument);
- (xv) the Mortgagee failing to recover any of the Secured Moneys or any other moneys from any person;
- (xvi) the Secured Moneys or any other moneys being irrecoverable from any person for any reason;
- (xvii) the Mortgagee failing to give notice to any Transaction Party of any act, omission, event, matter of thing including any default by any person under, or in relation to, any agreement (including any Transaction Document, Security Interest or Guarantee), transaction, judgment or document (including a negotiable instrument);

- (xviii) any judgment against any person;
  - (xix) the opening of a new account by any person or the operation of a new account;
  - (xx) the fact that any person who was to become a co-surety or co-indemnifier in relation to the Secured Moneys or any other moneys has not done so, has not done so effectively or has done so on different terms to the Mortgagor;
  - (xxi) the acceptance of the repudiation of or other termination of any agreement (including any Transaction Document, Security Interest or Guarantee) transaction or document;
  - (xxii) any breach of any agreement (including any Transaction Document, Security Interest or Guarantee) transaction or document;
  - (xxiii) an assignment of any rights in connection with the Secured Moneys or any other moneys;
  - (xxiv) the death, incapacity, disability, insolvency or bankruptcy, or notice to the Mortgagee of the death, incapacity, disability, insolvency or bankruptcy of, any person;
  - (xxv) the dissolution, or any alteration in the composition, of any partnership, firm or joint venture;
  - (xxvi) the appointment of a provisional liquidator, liquidator, official manager, administrator, receiver or receiver and manager in relation to any person that is a corporation or the assets of any such person;
  - (xxvii) the merger, amalgamation, change in control, insolvency, winding up, dissolution, administration or reconstruction of any person that is a corporation;
  - (xxviii) the fact that any person is a trustee, nominee, joint owner or joint venturer or a member of a partnership, firm or an association;
  - (xxix) any asset or property subject to an Encumbrance being destroyed, lost, forfeited, extinguished, surrendered, compulsorily acquired or determined;
  - (xxx) any payment, dividend or distribution to, or receipt by, the Mortgagee;
  - (xxxii) any increase in the Secured Moneys; or
  - (xxxiii) any other act, omission, event, circumstance, matter or thing whatsoever whether negligent or not.
- (b) Nothing in clause 18.1(a) limits the generality of anything else in it.
  - (c) For the avoidance of doubt and without limiting who is included in the term 'person' when used in any other provision of this Mortgage, a reference in clause 18.1(a) to 'any person' includes a Transaction Party.
  - (d) Clause 18.1(a) applies irrespective of:
    - (i) any Law to the contrary; or

- (ii) the knowledge or consent, or the lack of knowledge or consent, of the Mortgagee, any Transaction Party or any other person of any act, omission, event, circumstance, matter or thing referred to in that clause.

## **18.2 Suspension of Mortgagor's rights**

Until all of the Secured Moneys have been paid in full and this Mortgage has been discharged, the Mortgagor is not entitled to:

- (a) be subrogated to the Mortgagee;
- (b) claim or enforce any right of contribution or indemnity against any Transaction Party;
- (c) raise a defence, set-off or counter-claim available to it or any Transaction Party against the Mortgagee;
- (d) claim or receive the benefit of any moneys held by the Mortgagee or any Security Interest, Guarantee or other agreement or document held by or which benefits the Mortgagee;
- (e) make a claim or enforce any Right (including under or pursuant to a Security Interest or Guarantee) against any Transaction Party or the property of any Transaction Party;
- (f) subject to clause 18.3, directly or indirectly prove in, or claim or receive the benefit of any distribution, dividend or payment made or to be made in relation to, the insolvency, bankruptcy, liquidation or administration of any Transaction Party; or
- (g) take, obtain or permit to exist any Security Interest from a Transaction Party.

## **18.3 Bankruptcy or liquidation**

- (a) If a Transaction Party goes into liquidation or becomes bankrupt, the Mortgagor must, if directed by the Mortgagee:
  - (i) prove in the liquidation or bankruptcy (in the manner and to the extent required by the Mortgagee) for all amounts, debts and monetary liabilities which can be proved for or claimed in the liquidation or bankruptcy; and
  - (ii) enforce (in the manner and to the extent required by the Mortgagee) each Security Interest held by the Mortgagor from that Transaction Party.
- (b) Any money, asset or other dividend recovered or received by the Mortgagor in any liquidation or bankruptcy of a Transaction Party or under any Security Interest held by the Mortgagor from that Transaction Party must be received and held on trust by the Mortgagor to the extent of the unsatisfied liability of the Mortgagor under the Transaction Documents.
- (c) The Mortgagor irrevocably and unconditionally authorises the Mortgagee in its absolute discretion (as agent for the Mortgagor) to do anything that the Mortgagor is required to do following any direction by the Mortgagee under clause 18.3(a).

## **18.4 Void transactions**

If any transaction or payment relating to any Secured Moneys is void, voidable, unenforceable or refundable:

- (a) the Mortgagee is entitled against the Mortgagor to all rights that it would have had if the transaction or payment had never occurred; and
- (b) the Mortgagor must do all things and sign any documents necessary to restore to the Mortgagee its rights immediately before that transaction.

### **18.5 Appropriation**

- (a) The Mortgagee may appropriate to payment or repayment of any part of Secured Moneys any moneys:
  - (i) received by the Mortgagee from any Transaction Party; or
  - (ii) received or recovered by the Mortgagee under any Transaction Document.
- (b) If a Transaction Document secures any moneys in addition to the Secured Moneys, the Mortgagee may apply any amounts received or recovered by the Mortgagee under that Transaction Document in such manner as the Mortgagee may determine in its absolute discretion.
- (c) Any appropriation or application made by the Mortgagee overrides any appropriation made by any Transaction Party.

### **18.6 Suspense account**

The Mortgagee may place any moneys received by it in respect of the Secured Moneys into a suspense account and may at any time appropriate any of those moneys towards payment of the Secured Moneys. Any moneys received by the Mortgagee and placed in a suspense account are deemed not to be a reduction in the Secured Moneys until the Mortgagee appropriates the moneys towards payment of the Secured Moneys.

### **18.7 Enforcement**

- (a) The Mortgagor's obligation to pay the Secured Moneys is a primary obligation.
- (b) The Mortgagee may demand payment of the Secured Moneys by the Mortgagor and enforce this Mortgage without first:
  - (i) proceeding against or enforcing any other Right against any Transaction Party or any other person or property;
  - (ii) enforcing any Security Interest or Guarantee (including a Collateral Security); or
  - (iii) demanding payment of any of the Secured Moneys by any Transaction Party or any other person.

### **18.8 Interpretation**

Nothing in this clause 18 limits the generality of any other provision of this Mortgage.

---

## **19 Notices**

### **19.1 Notice requirements**

- (a) A notice, certificate, consent, application, waiver or other communication (each a **Notice**) under this Mortgage must be:
  - (i) in legible writing in the English language;

- (ii) subject to clause 19.1(b), signed by or on behalf of the sender or by a lawyer for the sender;
  - (iii) marked for the attention of the person or position (if any) last notified by the intended recipient of the Notice; and
  - (iv) left or sent in accordance with clause 19.2.
- (b) A printed or copy signature is sufficient for the purposes of sending any Notice by facsimile.
- (c) A Notice must not be given orally or by email or any other form of electronic communication (except by facsimile).

#### **19.2 Method and address for delivery**

- (a) Subject to clause 19.2(b), a Notice must be:
- (i) left at the intended recipient's address set out above;
  - (ii) sent by prepaid ordinary mail (or prepaid airmail, if from one country to another country) to the intended recipient's address set out above; or
  - (iii) sent by facsimile to the intended recipient's facsimile number (if any) set out above.
- (b) If the intended recipient of a Notice has notified the sender of another address or facsimile number for the purposes of receiving Notices, then subsequent Notices to that intended recipient must be left at or sent to the address or facsimile number (as applicable) last notified by that intended recipient.

#### **19.3 Time of receipt**

- (a) Subject to clause 19.3(b), a Notice is taken to have been received by the intended recipient:
- (i) if left at the intended recipient's address, at the time of delivery;
  - (ii) if sent by prepaid ordinary mail, on the third Business Day after the day of posting, or if sent by prepaid airmail from one country to another country, on the tenth Business Day after the day of posting; and
  - (iii) if sent by facsimile, at the time shown in the transmission report as the time when the whole Notice was sent.
- (b) If a Notice is received by a recipient on a day that is not a Business Day or after 4.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- (c) A Notice is effective from the time it is taken to have been received in accordance with this clauses 19.3(a) and 19.3(b) (unless a later time is specified in the Notice, in which case the notice takes effect from that time).

#### **19.4 Other modes or places of service**

Nothing in this Agreement limits or excludes any other mode or place of service required by an applicable Law or authorised by legislation.

---

## 20 Costs and expenses

### 20.1 Obligation to pay or reimburse

- (a) The Mortgagor must pay to the Mortgagee all fees (including legal fees), costs, charges and expenses incurred, paid or payable by the Mortgagee in connection with any or any combination of the following:
- (i) the negotiation, preparation, execution, delivery, stamping, registration, performance, release, discharge, amendment, enforcement or attempted enforcement or otherwise of any Transaction Document;
  - (ii) the defence, protection or preservation of the title of the Mortgagor to the Mortgaged Property;
  - (iii) any approval, consent or waiver of any Right under any Transaction Document;
  - (iv) any request for any approval, consent or waiver of any Right under any Transaction Document;
  - (v) the exercise or the attempted exercise of any Right under a Transaction Document or an applicable Law;
  - (vi) the remedy or rectification or attempted remedy or rectification of any breach of or default under any Transaction Document;
  - (vii) any Default Event;
  - (viii) the payment or repayment of the Secured Moneys, including:
    - (A) demanding or attempting to demand payment or repayment of the Secured Moneys; or
    - (B) enforcing or attempting to enforce payment or repayment of the Secured Moneys;
  - (ix) the survey, valuation, inspection, preservation, maintenance or protection of, or any report in relation to, the Mortgaged Property.
- (b) The Mortgagor must pay to the Mortgagee:
- (i) all duties, taxes and registration fees which are payable, assessed or incurred in relation to the execution, delivery, performance, release, discharge, amendment, enforcement or attempted enforcement or otherwise of any Transaction Document or any transaction contemplated by any Transaction Document; and
  - (ii) any fine or penalty which is incurred in respect of any failure to pay a duty or tax before the due date for payment except to the extent that the failure is attributable to the Mortgagee's failure to pay the duty or tax from moneys received from the Mortgagor before the due date.

### 20.2 Legal costs

A reference in clause 20.1 to legal fees includes legal fees on a solicitor and own client basis.

### **20.3 Mortgagor to bear costs**

Anything which the Mortgagor is required to do under or pursuant to this Mortgage, whether or not at the request of the Mortgagee, must be done at the cost and expense of the Mortgagor.

### **20.4 Remuneration**

The Mortgagee, any Receiver and any Attorney must be remunerated by the Mortgagor for any services rendered by any of them in relation to any of the matters referred to in clause 20.1(a). The rate of remuneration and the manner of payment will be determined by the Mortgagee.

---

## **21 Miscellaneous**

### **21.1 Governing law**

This Mortgage is governed by the Laws applying in Tasmania.

### **21.2 Dispute jurisdiction**

The parties submit to the non-exclusive jurisdiction of courts with jurisdiction in Tasmania, and any courts that may hear appeals from those courts, in respect of any proceedings in connection with this Mortgage.

### **21.3 Liability**

An obligation of, or a representation, a warranty or an indemnity by, two or more parties (including where two or more persons are included in the same defined term) under or in respect of this Mortgage binds them jointly and each of them severally.

### **21.4 Binding obligation**

This Mortgage binds each person who is a Mortgagor that executes it even if this Mortgage is not executed or not effectively executed by, or is otherwise not binding on, another person who is named as a Mortgagor.

### **21.5 Benefit**

An obligation, a representation, a warranty or an indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and each of them severally.

### **21.6 Compliance with obligations**

- (a) The Mortgagor must ensure that its officers, employees, volunteers, authorised contractors, agents and advisers involved in the performance by the Mortgagor of its obligations under this Mortgage:
  - (i) comply with the provisions of this Mortgage related to that performance; and
  - (ii) do not conduct themselves in a way that would result in the Mortgagor being in breach of this Mortgage or that, if the conduct was undertaken by the Mortgagor, would result in the Mortgagor being in breach of this Mortgage.
- (b) If the Mortgagor is prohibited from doing anything under this Mortgage, the Mortgagor must not knowingly assist, authorise or allow any other person to do that thing.

## **21.7 Severance**

If a provision of this Mortgage is or at any time becomes illegal, prohibited, void or unenforceable for any reason, that provision is severed from this Mortgage and the remaining provisions of this Mortgage:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this Mortgage.

## **21.8 Further assurance**

The parties agree to do or cause to be done all such acts, matters and things (including, as applicable, passing resolutions and executing documents) as are necessary or reasonably required to give full force and effect to this Mortgage.

## **21.9 Business Days**

If the day on or by which an act, matter or thing is to be done under this Mortgage is not a Business Day, that act, matter or thing must be done by no later than the next Business Day.

## **21.10 Amendment**

This Mortgage may only be amended or supplemented in writing signed by the parties.

## **21.11 Waiver**

- (a) A failure or delay by the Mortgagee, an Attorney or a Receiver in exercising a Right does not operate as a waiver of that Right.
- (b) A single or partial exercise of a Right by the Mortgagee, an Attorney or a Receiver does not preclude any other exercise of that Right or the exercise of any other Right.
- (c) A Right of the Mortgagee, an Attorney or a Receiver may only be waived in writing, signed by the party to be bound by the waiver. Unless expressly stated otherwise, a waiver of a Right of the Mortgagee, an Attorney or a Receiver is effective only in the specific instance and for the specific purpose for which it was given.

## **21.12 Successors and assigns**

This Mortgage is binding on and benefits each party and, unless repugnant to the sense or context, their respective administrators, personal representatives, successors and permitted assigns.

## **21.13 Rights cumulative**

Each Right of the Mortgagee, an Attorney or a Receiver provided for in this Mortgage:

- (a) operates independently of any other Right of the Mortgagee, an Attorney or a Receiver provided for in this Mortgage; and
- (b) is cumulative with, and does not exclude or limit, any other Right of the Mortgagee, an Attorney or a Receiver, whether at Law or pursuant to any other agreement, deed or document.

#### **21.14 Assignment**

- (a) The Mortgagee may assign its rights under all or any of the Transaction Documents.
- (b) The Mortgagee may disclose to a potential assignee of the Mortgagee's interest in any Transaction Document any information concerning any Transaction Document or any Transaction Party.
- (c) The Mortgagor must not assign any of its rights under any Transaction Document without the prior written consent of the Mortgagee.

#### **21.15 Set-off**

The Mortgagee may set-off against any moneys payable by the Mortgagee to the Mortgagor under this Mortgage any debt or other moneys from time to time due and owing by the Mortgagor to the Mortgagee. This right of set-off does not limit or affect any other right of set-off available to the Mortgagee.

#### **21.16 Disclosure**

- (a) Despite any confidentiality or intellectual property right subsisting in this Mortgage, a party may publish all or any part of this Mortgage without reference to another party.
- (b) Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

#### **21.17 Determination**

Where the Mortgagee is required or entitled to form or hold an opinion or view under or in relation to this Mortgage, that opinion or view may be formed or held by an Authorised Representative on behalf of the Mortgagee. This clause does not limit any other way in which the Mortgagee may otherwise form or hold an opinion or view under or in relation to this Agreement.

#### **21.18 Exercise of powers**

- (a) An Authorised Representative of the Mortgagee may act as the agent of the Mortgagee in discharging any functions or exercising any Rights that this Mortgage provides that the Mortgagee is to perform or may exercise.
- (b) A decision that may be made, or is required under this Mortgage to be made, by the Mortgagee may be made by an Authorised Representative of the Mortgagee.
- (c) An Authorised Representative of the Mortgagee may at any time and from time to time exercise on behalf of the Mortgagee any of the Mortgagee's Rights under this Mortgage.

#### **21.19 Consent and approvals**

- (a) This clause applies to any consent or approval which the Mortgagor must obtain from the Mortgagee in accordance with this Mortgage.
- (b) A request for consent or approval must be made in writing.
- (c) A consent or approval for the purposes of this Mortgage is not effective unless given in writing.
- (d) A consent or approval may be given subject to conditions.

- (e) The Mortgagor must comply with any conditions subject to which the approval or consent is given. To the extent that the Mortgagor fails to comply with the condition, that failure is taken to be a breach of this Mortgage.

#### **21.20 Doctrine of merger**

The doctrine or principle of merger does not apply to this Mortgage or to anything done under or in connection with this Mortgage. Accordingly, no Right or obligation of a party is merged in any thing done pursuant to this Mortgage.

#### **21.21 Minister or State of Tasmania expressed to be party**

- (a) If a Minister of the Crown (acting in that capacity) is expressed to be a party to this Mortgage, then unless an applicable Law provides otherwise:
  - (i) the Minister enters into this Mortgage on behalf of the Crown;
  - (ii) the Rights, obligations and liabilities expressed to be those of the Minister are Rights, obligations and liabilities of the Crown; and
  - (iii) each reference in this Mortgage to the Minister will be taken to include a reference to the Crown.
- (b) For the avoidance of doubt, if the State of Tasmania is expressed to be a party to this Mortgage, the Rights, obligations and liabilities of the State of Tasmania are Rights, obligations and liabilities of the Crown.

#### **21.22 No interference with executive duties or powers**

Nothing in this Mortgage is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this Mortgage that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.