

Master Asset Finance Agreement

Terms and Conditions

November 2023 Version

IMPORTANT NOTICE FOR GUARANTORS

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

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

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

Part E sets out additional conditions that apply if an *agreement* under your master asset finance agreement is a *large business transaction*. These terms apply in addition to the terms in the other parts of the document.

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

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

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Part A - Asset Finance Provisions

1. Entering into an agreement

- 1.1 This master agreement sets out the terms and conditions applicable to a *lease agreement*, a *rental agreement* or an *escrow agreement* (each an *agreement*).
- 1.2 To make an *offer* to enter into an *agreement* with *us* you must sign a *schedule* and give it to *us*.
- 1.3 Every *offer* to enter into an *agreement* must also be made by *you* submitting to *us*:
- (1) if required by *us* under a *lease agreement* or a rental agreement, payment of the first instalment of rent;
 - (2) the supplier's invoice for the goods; and
 - (3) any other information *we* may reasonably require.
- 1.4 Once *we* accept an *offer* by:
- (1) signing a *schedule*;
 - (2) paying to the supplier referred to in the relevant supplier's invoice, the purchase price payable in that invoice if directed by *you* to do so; or
 - (3) paying the purchase price payable in the relevant supplier's invoice into a contract clearing account allocated to *you* if *you* have not directed *us* to pay such amount to the supplier referred to in that invoice in accordance with (i) above. The contract clearing account is an account within *our* bank (it is not an account in *your* name, but is allocated to *you*) and no interest is earned on it,
- an *agreement* exists on the terms of this master agreement and the *schedule*, read together.
- 1.5 *You* agree that if the purchase price is paid into a contract clearing account under clause 1.4(3), *we* will pay the purchase price held in the contract clearing account allocated to *you* to the supplier as and when *you* direct *us* to do so. If *you* do not provide *us* with any instructions within six months of the date the purchase price is paid into the contract clearing account, the purchase price will be applied towards any outstanding *rental instalments*.
- 1.6 *We* need not accept any *schedule* you give *us*.
- 1.7 *You* may by notice to *us* revoke an *offer* at any time before acceptance by *us*.
- 1.8 By entering into a *schedule*, *you* represent and warrant that:
- (1) the VIN (if any) described in the *schedule* and all other information you provide to *us* as set out in the *schedule* is correct to the best of your knowledge and belief; and
 - (2) the *goods* are commercial property.
- 1.9 *You* acknowledge that *we* have entered into this master agreement and any *agreement* in reliance on the representations and warranties in clause 1.8.
- 1.10 Before accepting any *offer*, *we* may ask *you* to provide such additional information or documentation as *we* reasonably require.
- 1.11 In addition to any other clause in this *agreement*, *you* acknowledge that *we* may delay, block, or refuse to make a payment or take any other action where *we* reasonably consider it necessary to do so in order to avoid a breach

of *Australian Sanctions Law* or *International Sanctions Law*. *You* warrant and represent that *you* will not do, or omit to do, anything that would cause *us* to breach *Australian Sanctions Laws* or *International Sanctions Law*.

- 1.12 Unless otherwise specified in this master agreement or an *agreement*, clauses 2 to 20 (inclusive) relate to each *agreement* which is not an *escrow agreement*.

2. Term

- 2.1 Each *agreement* commences on its *commencement date* and is for the *term*.

3. Payment of rent

- 3.1 *You* must pay the *rent* by the *rental instalments* and on the terms set out in the *schedule*. For the avoidance of doubt, the *rent* becomes payable from the date an *agreement* exists under clause 1.4 and, if the *agreement* is formed pursuant to clause 1.4(3), the *rent* becomes payable even if *you* have not directed *us* to pay the purchase price to the supplier in accordance with clause 1.4(2).
- 3.2 *We* may require that payments be made by direct debit or other electronic means.

4. Payment of deposit and delivery of the goods

- 4.1 *You* are responsible for obtaining delivery of the *goods*.
- 4.2 Any delay in delivery of the *goods* does not affect *your* obligations under the *agreement* for those *goods*.
- 4.3 *You* must accept delivery of the *goods* and pay all delivery charges.

5. Location of the goods

- 5.1 The *goods* must be kept in *your* possession and control.
- 5.2 The *goods* must not be taken outside of Australia.
- 5.3 *You* must, when *we* request:
- (1) notify *us* of the location of the *goods*; and
 - (2) produce the *goods* for inspection and testing.

6. Ownership of the goods

- 6.1 *You* acknowledge that *you* have rights in the *goods* that are leased or bailed to *you* under this master agreement and any *agreement* when *you* obtain possession of the *goods*.
- 6.2 *You* acknowledge that *we* have provided financial accommodation which has been or is to be used wholly or in part to purchase, or acquire rights in, the *goods* and if relevant, the software in conjunction with the *goods*.
- 6.3 *You* represent and warrant that *you* have rights in the *goods*, or the power to transfer rights in the *goods* to *us* as the secured party and *you* acknowledge that either:
- (1) *we* have given value for any *security interest* provided for by this master agreement and any *agreement* and the transactions contemplated by them; or
 - (2) *you*, as the grantor have done an act by which the *security interest* arises,
 - (3) and therefore, *our security interest* has attached to the *goods* and is enforceable against *you*.

- 6.4 You must not create or permit to subsist any *security interest* (including a lien for repairs or storage) over the *goods* or over this master agreement or any *agreement* without *our* written consent.
- 6.5 You must not sell, transfer, or otherwise dispose of *your* rights in respect of the *goods* or purport to do so without *our* written consent, which will not be unreasonably withheld or delayed.
- 6.6 You must not place, or allow to be placed, on the *goods*, any plates or marks that are inconsistent with *our* ownership.
- 6.7 You must not alter the *goods* or do or omit to do anything likely to diminish the value of the *goods*.
- 6.8 Any replacement part or add on to the *goods* (including anything installed in or affixed to the *goods* for the purposes of the *PPS Act*) forms part of the *goods* and becomes *our* property.
- 6.9 You must not affix the *goods* to any property without *our* prior written consent. Any fixing must be temporary and only to the extent necessary for the proper use of the *goods*.
- 6.10 You must do everything *we* reasonably request including obtaining waivers by other persons to ensure that no other person acquires or retains any interest in the *goods*.
- 6.11 *We* may apply to register at *your* expense, a financing statement for each *security interest* created by or in connection with, or arising out of, or as a result of this master agreement and any *agreement* in order to perfect that *security interest* for the purposes of section 21 ("Perfection - main rule") of the *PPS Act*.
- 6.12 You must do everything *we* reasonably ask to ensure that a *security interest* is perfected to the extent necessary for *us* to obtain the highest possible priority in respect of that *security interest* and to reduce as far as reasonably possible the risk of a third party taking free of the *security interest*.
- 6.13 You will comply with any requisitions that may be raised by any person in relation to the registration of any *security interest* created by, or in connection with, or arising out of, or as a result of this master agreement and any *agreement*.
- 6.14 You will do anything that is reasonably necessary to remedy any defect in the registration of any *security interest* created by, or in connection with, or arising out of, or as a result of this master agreement and any *agreement*.
- 6.15 You acknowledge that, subject to the *PPS Act*, if the *goods* gives rise to proceeds (by being dealt with or otherwise), the *security interest*:
- (1) continues in the *goods*; and
 - (2) attaches to the proceeds (and nothing in this master agreement and any *agreement* will be taken to provide otherwise).
- 6.16 You must do anything *we* ask to procure the discharge of any registered *security interest* which has priority to any *security interest* created by an *agreement*.
- 6.17 If *you* want *us* to acquire software in conjunction with the *goods*, then *you* must:
- (1) inform *us* of this when asking *us* to lease/hire the *goods* to *you*; and
 - (2) set out the price of the software separately.
- 6.18 If *we* agree to *your* request to acquire software in conjunction with the *goods*, then:
- (1) *we* will acquire the software as *your* agent;
 - (2) *rental instalments* will be calculated as if the cost of the software is part of the cost of the *goods*; and
 - (3) the definition of *goods* is taken to include the software.
- ## 7. Use of the goods
- 7.1 You must only use the *goods* in accordance with:
- (1) all applicable laws; and
 - (2) the manufacturer's specifications.
- 7.2 You must keep the *goods* registered whenever it is necessary to do so to use or operate the *goods*.
- 7.3 You must not without *our* prior written consent alter or modify the *goods* in any material manner.
- 7.4 You assume all risks and liabilities arising from the use and possession of the *goods*.
- ## 8. Repairs
- 8.1 You must at *your* expense:
- (1) keep the *goods* in good repair and condition;
 - (2) take proper care of the *goods*; and
 - (3) maintain and service the *goods* in accordance with the manufacturer's specifications.
- 8.2 You must provide *us* with a written statement disclosing all defects in the *goods* whenever requested (and whether or not the relevant *agreement* for those *goods* has *expired* or *terminated*).
- 8.3 All repairs to the *goods* must be carried out by suitably qualified personnel.
- ## 9. Loss of the goods
- 9.1 You bear the risk of the loss or damage to the goods except to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors or agents, or any receivers we appoint in respect of the goods.
- 9.2 You must notify *us* if the *goods* are lost or damaged.
- 9.3 If the *goods* are totally lost or damaged, then *we* may *terminate* the *agreement* relating to those *goods*. If that occurs, then:
- (1) *you* must pay an amount equal to the *termination amount*; and
 - (2) *we* must give credit (if and when received) for any insurance or other money received in relation to that *loss* or damage as specified in clause 9.4 (for a *rental agreement*) or 9.5 (for any other *agreement*), net of all costs and expenses and amounts owing to *us*.
- 9.4 If the agreement is a rental agreement and:
- (1) *you* have paid *us* the *termination amount*; *we* will pay *you* any insurance or other money received up to the amount of the *termination amount* paid and *we* will be entitled to any excess; and
 - (2) *you* have not paid *us* the *termination amount*; *we* will be entitled to all of any insurance or other money received and *you* will still have to pay *us*

any shortfall in the *termination amount* after applying such money.

You irrevocably appoint *us* as *your* attorney to do these acts on *your* behalf.

- 9.5 If the agreement is not a rental agreement and:
- (1) *you* have paid *us* the *termination amount*; *we* will pay *you* all of any insurance or other money received; and
 - (2) *you* have not paid *us* the *termination amount*; *we* will be entitled to retain any insurance or other money received up to the *termination amount* (and *you* will still have to pay *us* any shortfall in the *termination amount* after applying such money) and will pay *you* any excess.

11. Exclusion of warranties

11.1 You acknowledge that:

- (1) *we* have agreed to purchase the *goods* for the sole purpose of leasing/hiring (as relevant) the *goods* to *you*;
- (2) all negotiations in relation to the supply of the *goods* have been conducted between *you* and the supplier of the *goods*;
- (3) when *you* deliver a *schedule* to *us* there has not been a significant change in *your* business, assets, or financial condition since *you* last entered into an *agreement* with *us* which would have an adverse effect on *your* ability to meet *your* obligations under an *agreement*;
- (4) the supplier of the *goods* is not *our* agent in respect of the sale of *goods* and has no authority to represent or bind *us*;
- (5) *you* acknowledge that *you* are responsible for selecting, examining, and inspecting the *goods* before *you* accept them and to satisfy *yourself* about them, their quality, compliance with description, condition, safety, suitability, and fitness for *your* purposes, the validity of any warranties or guarantees for the *goods*, and entitlements to patents;
- (6) the *goods* as delivered are accepted by *you* with all faults and defects (if any). *We* may take *your* acceptance of delivery as evidence that *you* are satisfied that the *goods* are in good and substantial working order and condition and constitute the *goods* the subject of the *agreement*;
- (7) *your* obligations under the *agreement* continue despite the occurrence of any defect in or breakdown (whether total or partial) of the *goods*; and
- (8) *you* have been advised to obtain independent legal, taxation and financial advice in relation to this master agreement and each *agreement*.
- (9) These acknowledgments are repeated by *you* each time *you* deliver a *schedule* to *us*.

9.6 If the *goods* are lost or damaged, but *we* do not *terminate* the relevant *agreement* under clause 9.3, then:

- (1) *you* must immediately repair or replace the *goods* with comparable goods in good working order and condition;
- (2) the replacement goods form part of the *goods* under that *agreement*; and
- (3) any proceeds of insurance must if *we* so require be applied towards repair or replacement of the *goods*.

11.2 Subject to any legislation to the contrary *you* acknowledge that:

- (1) *we* are not liable to *you* for and *you* release *us* from any *claim* caused directly or indirectly by the *goods*, this master agreement or any *agreement* or by any inadequacy of the *goods* or any defect in the *goods* or from the usual condition of the *goods* or in connection with injury or death of any person, or loss or damage to property arising from the use of the *goods* except to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors or agents, or any receivers we appoint in respect of the *goods*.

11.3 You acknowledge that to the full extent permitted by law:

- (1) all express and implied terms, conditions and warranties are excluded, other than as set out in an *agreement*.

10. Insurance

10.1 You must keep the *goods* insured during the *term* against such risks as *we* require, and such insurance must be for the full insurable value of the *goods*.

10.2 If required by *us*, insurance must:

- (1) be on terms approved by *us*;
- (2) be with an insurer approved by *us*; and
- (3) note *our* interest in the *goods*.

10.3 You must pay all premiums and other charges in relation to the insurance.

10.4 You must when requested provide to *us*:

- (1) a copy of any insurance policy relating to the *goods*;
- (2) evidence of payment of the premium; and
- (3) any other evidence *we* may require to verify that the *goods* are fully insured.

10.5 You must not do or permit anything to occur that may prejudice any insurance or any *claim* under any insurance.

10.6 You must promptly notify *us* in writing of any event that may lead to a *claim* under any insurance. You must comply with all *our* directions in respect of any *claim*.

10.7 You authorise *us* in respect of any *claim* under any insurance to:

- (1) make the *claim*;
- (2) adjust or compromise the *claim*;
- (3) give receipts or discharges;
- (4) receive and retain any money payable;
- (5) apply any money payable, in *our* discretion, to reduce money owing under the relevant *agreement* or in repair of the *goods*; and
- (6) otherwise generally to act on *your* behalf in the manner *we* think fit.

- (2) where Division 1 of Part 3.2 of Schedule 2 to the Competition and Consumer Act 2010 (Cth), Division 2 of Part 2 of the Australian Securities and Investments Commission Act 2001 (Cth) or any law having similar effect applies, *our* liability for anything in relation to the *goods* or the use of the *goods* or any financial services under an *agreement*, including damage or economic loss to anyone, is limited as much as it can be and it cannot be more than either:
- (a) to replace the goods with the same or equivalent goods, to pay the cost of such a replacement, or to repair the goods or pay for their repair; or
 - (b) where applicable, to re-supply the financial services with the same or equivalent services or pay for the cost of that re-supply of the financial services.
- 11.4 If the supplier of the *goods* has given *us* warranties for the *goods* you may claim on the supplier for a claim we could have made.
- 11.5 Nothing in this master agreement or any *agreement* is intended to exclude, restrict or modify any statutory obligation we have if that obligation cannot be lawfully excluded.
- ## 12. Return of the goods
- 12.1 On termination or expiration, *you* must at your own cost:
- (1) return the *goods* to the place we specify; and
 - (2) ensure that the goods when returned are in good repair, condition and working order (fair wear and tear excepted).
- ## 13. Failure to deliver
- 13.1 If on *expiration*, *you* fail to deliver the *goods* to *us*:
- (1) *you* continue to hold the *goods* on the terms of the relevant *agreement* for the *goods* except to the extent set out in this clause 13;
 - (2) *you* must continue to pay *rental instalments* in respect of that *agreement* at the same rate applicable before *expiration*; and
 - (3) the agreement may be *terminated* at any time by either *us* or *you* giving 7 days' notice, in which case *your* failure to return the *goods* to *us* by the end of the notice period will be an *event of default* in respect of which we can exercise our rights under clauses 17, 18 and 19 (as applicable).
- Clauses 12 and 13 do not affect any of *your* obligations to pay *residual value*. Any *rental instalments* paid as contemplated in clause 13.1(2) will not reduce the *residual value*.
- ## 14. Expiration – lease agreements
- 14.1 This clause 14 only applies to *lease agreements*.
- 14.2 On *expiration* *you* must return the *goods* to *us* in accordance with clause 12.
- 14.3 If on *expiration* *you* return the *goods* to *us* then *you* must pay to *us* promptly on request, the amount (if any) by which the *residual value* exceeds the *value of the goods*. If the *value of the goods* exceeds the *residual value* the surplus must be applied in reduction of any other indebtedness *you* have to *us* under any other *agreement*, or if there is no such indebtedness, paid to *you*.
- 14.4 If on *expiration* *you* fail to return the *goods* to *us* (and we have not otherwise regained possession of the *goods*) then *you* must pay to *us* on demand, by way of liquidated or ascertained damages, the *residual value*. If we subsequently obtain possession of the *goods* and sell those *goods*, we must apply the sum representing the *value of the goods* in reduction or satisfaction of *your* indebtedness under the relevant *agreement*.
- 14.5 We will inform *you* of your obligations prior to the *expiration* of your *lease agreement*.
- ## 15. Expiration – rental agreements
- 15.1 This clause 15 only applies to *rental agreements*.
- 15.2 On *expiration* *you* must return the *goods* to *us* in accordance with clause 12.
- 15.3 If on *expiration* *you* wish to purchase the *goods*, *you* must contact *us* to advise *us* of *your* intention to purchase the *goods* on terms to be agreed between *you* and *us*. We are under no obligation to sell the goods to *you*.
- 15.4 We will inform *you* of your obligations prior to the *expiration* of your *rental agreement*.
- ## 16. Events of default
- 16.1 It will be an *event of default* under an *agreement* if any of the following occurs:
- Monetary event of default
- (1) in relation to any *rental agreement* or *lease agreement*, *you* fail to pay any *rental instalment* or other money due under this *agreement* when it becomes payable, and that failure continues for 7 days after notice from *us*;
- Non-monetary event of default
- (2) *you* or a *guarantor* is insolvent;
 - (3) a default based action is taken by *us* against *you* or a *guarantor*, due to an event of default set out in this clause 16.1;
 - (4) we believe on reasonable grounds that *you* or a *guarantor* has not complied with the law or any requirement of a statutory authority, which would adversely affect your ability to meet your obligations under an *agreement* or put the *goods* at risk;
 - (5) it becomes unlawful for *you* or *us* to continue with an agreement;
 - (6) *you* or a *guarantor* give *us* information or make a representation or warranty to *us* which is materially incorrect or misleading (including through omission) which has had, or is likely to have a material increase to our risk under the *agreement* or our *security interest* over the *goods*;
 - (7) *your* or a *guarantor's* assets are dealt with, or attempted to be dealt with, in breach of this master agreement or any agreement, or any security interest you have granted *us* or any arrangement with *us*;
 - (8) *you* or a *guarantor* do not provide financial information reasonably required by *us* under this master agreement or any agreement;
 - (9) *you* or a *guarantor* do not maintain an unrestricted licence or permit or authorisation necessary to conduct *your* business and this would constitute a

- material risk to us or the goods or our security interest over the goods;
- (10) *you* or a *guarantor* do not maintain insurance required by this master agreement or any agreement;
- (11) legal or beneficial ownership, or management control, of *you* or a *guarantor* changes without *our* consent.
- 16.2 Where an *event of default* is able to be remedied, we will only act on that *event of default* after *we*:
- (1) give *you* a default notice describing the *event of default*; and
- (2) give *you* a reasonable time (being not less than 30 days) to remedy the *event of default*;
- (3) except where it is reasonable for us to give *you* no notice or a shorter notice period if *we* reasonably believe it is necessary to act quickly to manage a material and immediate risk relating to:
- (a) the event of default;
- (b) your particular circumstances; or
- (c) the value of a *security interest* in our favour.
- 16.3 *We* will then only act on a non-monetary *event of default* if it is by its nature material, or *we* reasonably consider the *event of default* has had, or is likely to have a material impact on:
- (1) *you* or a *guarantor's* ability to meet *your* or their financial obligations (or our ability to assess these);
- (2) *our* security risk (or *our* ability to assess it);
- (3) *our* legal or reputation risk where clauses 16.1(4), 16.1(5) or 16.1(6) applies.
17. Consequences of an event of default
- 17.1 If an *event of default* has occurred under an *agreement* and we can act on that *event of default*, we may do one or more of the following in addition to anything else the law allows us to do:
- 17.2 *We* can *terminate* the *agreement*; and
- 17.3 *We* can require *you* to pay *us* all amounts you owe us under the *agreement*; and
- (1) *we* are entitled to repossess the goods; and
- (2) *we* are no longer required to perform any of our obligations under that *agreement*; and
- (3) *we* may enter on any land or premises where the goods are, or where *we* reasonably consider the goods are, for the purpose of that repossession; and
- (4) *we* will give *you* notice of our intention to repossess the goods unless *we* need to act quickly to protect the goods or our security interest in the goods, in which case *we* may dispense with the need to give notice of repossession.
- 17.4 *We* will provide *you* with a notice of *termination*, unless giving *you* a notice of termination is impractical or would adversely affect *our* rights (including *our* rights to repossess the *goods*) in which case *we* may dispense with the need to give notice.
- 17.5 *We* will give *you* notice or comply with certain conditions before *we* require *you* to immediately pay all amounts you owe us or take *enforcement proceedings* or other action. For example, if an *event of default* has occurred, *we* will give *you* at least 30 days' notice before *we* require *you* to immediately pay all amounts *you* owe *us* or take *enforcement proceedings* (however, *we* can give *you* a shorter notice period or no notice in certain circumstances).
18. Termination before expiration – lease agreements
- 18.1 This clause 18 only applies to *lease agreements*.
- 18.2 If *we* terminate a *lease agreement*, *you* must:
- (1) return the *goods* to *us* in accordance with clause 12; and
- (2) pay to *us* on demand as liquidated damages the *termination amount*.
- 18.3 As soon as practicable, and in any case, within 3 months after *you* return the *goods* under clause 12 or *we* repossess the *goods* under clause 17 on *termination*, *we* will offer the *goods* for sale at a public auction with or without reserve or by private treaty at such location and on such terms and conditions as *we* may reasonably determine.
- 18.4 If *you* return the *goods* under clause 12 or *we* repossess the *goods* under clause 17 on *termination*, *we* will pay *you* either:
- (1) if *you* have not paid *us* the *termination amount* and all amounts due and payable under the *lease agreement*, the amount by which the *net sale proceeds* received by *us* exceeds the *termination amount* and all other amounts owing under the *lease agreement*; or
- (2) if *you* have paid *us* the *termination amount* and all amounts due and payable under the *lease agreement*, the total amount of the *net sale proceeds* received by *us*.
19. Termination before expiration – rental agreements
- 19.1 This clause 19 only applies to *rental agreements*.
- 19.2 If *we* terminate a *rental agreement*, *you* must return the *goods* to *us* in accordance with clause 12.
- 19.3 If *we* terminate a *rental agreement* and *you* return the *goods* to *us* or *we* are able to repossess the *goods* under clause 17, *you* must pay to *us* on demand as liquidated damages the amount (if any) by which the *termination amount* exceeds the *value of the goods*.
- 19.4 If *you* fail to return the *goods* to *us* and *we* are unable to repossess the *goods* under clause 17 for any reason, *you* must pay to *us* the greater of the *value of the goods* and the *termination amount*.
- 19.5 In this clause 19 *value of the goods* means the value of the goods calculated by *us* as at the time immediately before the *termination* taking into account market data available to *us*.
20. Acknowledgements and indemnities
- 20.1 In relation to a *lease agreement* and a *rental agreement*, *you* acknowledge that the *rent* and other money payable in connection with this *agreement* has been calculated on the basis that:

- (1) *we* will be entitled to claim a deduction for depreciation in respect of the *goods* under the *Income Tax Assessment Act*; and
 - (2) otherwise at the rates of duty and any relevant taxes applicable at the *commencement date*.
- 20.2 In relation to a *lease agreement* and a *rental agreement*, *you* must indemnify *us* against any loss reasonably determined by *us* if:
- 20.3 *we* are not entitled to the whole or part of the deduction for the depreciation of the *goods* under the *Income Tax Assessment Act*,
 - (1) the annual depreciation or *rent* for the *goods* is varied from that applicable at the *commencement date*; or
 - (2) the method of calculation of depreciation of *goods* is varied from the method *we* use for calculating the depreciation of the *goods*.
- 20.4 *You* indemnify *us* against any *loss* if additional taxes (including, without limitation, capital gains tax, withholdings, deductions, levies, charges, goods and services tax, sales, consumption, or value added tax) or duty is or becomes payable in respect of an *agreement* or any transaction contemplated by an *agreement*, or the rate of any existing tax is varied.
- 20.5 *You* indemnify *us* against any liability or *loss* *we* may incur (including loss of margin), including in relation to *our* funding of the purchase price of the *goods* the subject of a *lease agreement*, or a *rental agreement*, where the *goods* are delivered after the *commencement date*, or where *you* fail to accept delivery of the *goods* after *we* have paid the purchase price of the *goods*. Your liability under this indemnity excludes any loss or damage to the extent caused by *our* mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of *our* employees, officers, contractors or agents, or any receivers *we* appoint.

Part B - Escrow Agreement Provisions

21. Acquisition of the components

21.1 Subject to the provisions of this clause and clause 22, we will acquire from each *supplier* the *components* as notified by *you* to *us* in a *funding notification*.

21.2 Subject to the provisions of this clause and clause 22, we will acquire from each *supplier* the *components* on terms and conditions:

- (1) already agreed between *you* and the relevant *supplier*;
- (2) to be agreed between *us* and the relevant *supplier*, or
- (3) where *we* authorise *you* in writing to act as *our* agent in connection with a specified *component*, on terms and conditions to be agreed between *you* and the relevant *supplier*.

21.3 Despite clause 21.1 we will not at any time be obliged to pay any amount (including all costs and expenses of acquisition and delivery and the amount of any *holding interest* accrued) in excess of the *purchase price limit* for the acquisition of all *components*.

21.4 *You* agree that the provisions of clause 11 of this document apply to each *escrow agreement* as though set out in full in this clause 21, and accordingly references to "*agreement*" in clause 11 shall be construed as references to "*escrow agreement*" and references to "*goods*" shall be to "*components*".

21.5 If at any time:

- (1) the price of any *component* (including the costs and expenses referred to in clause 21.3) exceeds the amount, if any, set out opposite that *component* in the *schedule*; or
- (2) *we* consider the aggregate of the price of all of the *components* and the *holding interest* exceeds or will exceed the *purchase price limit*,

you must pay the amount of any excess when requested by *us*.

21.6 Unless *we* otherwise agree in writing, acting reasonably *we* will not be obliged to acquire any further *component* once the *purchasing period* has elapsed.

21.7 *You* must use your best endeavours to ensure that each *component* is delivered:

- (1) in accordance with any agreed delivery schedule; and
- (2) during the *purchasing period*.

22. Acquiring components

22.1 If *we* acquire a *component*, that *component* is bailed to *you* under the relevant *escrow agreement*. *You* acknowledge that *we* will acquire the *components* for the sole purpose of leasing or renting arrangements for the *components* with *you*.

22.2 *Our* obligations to acquire any *component*, and to deliver any *component* to *you*, are subject to and conditional on:

- (1) *you* having made any payments that become due to *us* under clause 21.5 and having paid any other money payable to *us*;
- (2) the relevant *supplier* delivering the *components* to *us*, or at *our* direction to *you*, and that *component* being accepted by *you*. Where any *component*

supplied by a *supplier* is not acceptable because of any defect in quality or otherwise of that *component you* must arrange to obtain a substitute *component* from the *supplier* or from an alternative *supplier*;

- (3) receipt by *us* of every policy of insurance in accordance with the terms and conditions of the *escrow agreement*;
- (4) *you* otherwise complying with all of *your* obligations under the relevant *escrow agreement* and any other agreement between *you* and *us*;
- (5) no event that would constitute an event of default under the terms of the corresponding *lease agreement* or *rental agreement* having occurred;
- (6) *you* having satisfied any other conditions precedent specified in the *schedule* for that *escrow agreement*;
- (7) the guarantee referred to in clause 25 entered into in relation to the relevant *escrow agreement* continuing to be in existence; and
- (8) *you* paying the *administration fee* in respect of the *components* to *us*.

22.3 If an event occurs which means that clauses 22.2(4) or 22.2(5) cease to be true, then *we* may by notice to *you* terminate *our* obligations under the relevant *escrow agreement*.

22.4 Before *we* terminate our obligations under the relevant *escrow agreement* under clause 22.3:

- (1) *we* will allow *you* a reasonable time (being not less than 30 days) to remedy a breach of clauses 22.2(4) or 22.2(5), if it is able to be remedied, and notify *you* of this time period. However, *we* do not have to do this if *we* reasonably believe it is necessary to act to manage a material and immediate risk relating to:
 - (a) the breach;
 - (b) your particular circumstances; or
 - (c) the value of a *security interest* in our favour; and
- (2) *we* will then only act on the breach of clauses 22.2(4) or 22.2(5), if it is by its nature material, or *we* reasonably consider it has had, or is likely to have, a material impact on:
 - (a) *your* ability to meet *your* financial obligations (or *our* ability to assess these);
 - (b) *our* security risk (or *our* ability to assess it);
 - (c) *our* legal or reputation risk.

22.5 If *we* terminate an *escrow agreement* under clause 22.3, then *you* must:

- (1) pay *us* within 7 days of the date of *termination* as and by way of liquidated damages an amount being the sum of:
 - (a) the *purchase price* paid by *us* (including all *holding interest* up to the date of payment);
 - (b) the *escrow services fee*; and
 - (c) any other loss or liability that *we* have reasonably incurred arising from any breach by *you* of *your* obligations under that *escrow agreement*, or from the

termination by us of that *escrow agreement* or any liability arising in connection with that *escrow agreement* or our purchase of the *components*, except to the extent the loss or liability is caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors or agents, or any receivers we appoint in respect of the goods,

and, if we so direct:

- (2) at your expense deliver any components already delivered to you back to us or as we direct; and
- (3) you must procure that we are released from any obligations to acquire any further components.

22.6 If we obtain possession of any *component* under the provisions of clause 22.5 then we may sell or otherwise dispose of that *component* in whole or in part by public auction, tender or private treaty to or through persons dealing in goods of a similar description and on the terms and conditions we think fit acting reasonably. Any amount received will be applied in reduction of any amount owing by you under clause 22.5.

22.7 If the aggregate of any amount received by us for any sale or disposal under clause 22.6 exceeds the total loss suffered by us, we may:

- (1) use that excess amount to reduce any other money you owe us under any other *agreement*; or
- (2) may remit that excess amount to you or at your direction.

23. Holding interest on components

23.1 We will compute interest at the *holding rate* on all money paid by us by way of deposit, instalment, progress payment, expense or *purchase price* to the relevant *supplier* in respect of each *component*.

23.2 *Holding interest* will be computed from the date we make each payment up to and including the *commencement date*. It will be computed on a daily basis for actual days elapsed and will be compounded on the last day of each month.

23.3 *Holding interest* will form part of the *purchase price* of the *component* incurred by us for the purpose of calculating the lease payments and residual.

23.4 Information on the current *holding rate* is available on request.

24. Leasing, renting, or hiring of the components

24.1 Subject to clause 22, on the first to occur of:

- (1) the acquisition by us of all *components* for the *approved purpose* or so many of the *components* for the *approved purpose* as are in our view reasonable and practically capable of acquisition by us; or
- (2) the aggregate amount paid by us (excluding any GST) in acquiring the *components* and the accrued *holding interest* being equal to or in excess of the *purchase price limit*; or
- (3) the end of the *purchasing period*,
- (4) you must elect, within 7 *business days* of the occurrence of the relevant event to:

- (a) enter into a rental agreement or lease agreement for the components; or
- (b) pay out the *escrow agreement* in accordance with clause 24.8 below.

Once an election is made it is irrevocable and takes effect from the date of the election.

24.2 Prior to the occurrence of any of the events set out in clause 24.1, you may elect to:

- (1) enter into a rental agreement or lease agreement for the components; or
- (2) pay out the *escrow agreement* in accordance with clause 24.9 below.

Once an election is made it is irrevocable and takes effect from the date of the election.

24.3 If you elect to enter into a *rental agreement* or a *lease agreement* for the *components* under clause 24.1 or clause 24.2, you will take the *components* from us for the *term*, at the total *rent* determined in accordance with clause 24.4 and on the terms and conditions provided for in Part A - Asset Finance Provisions - Lease and Rental of this master agreement. An *escrow service fee* is payable by you when you elect to enter into a *rental agreement* or a *lease agreement*.

24.4 For the purpose of completing the corresponding *lease agreement* or *rental agreement* contemplated in clause 24.1(4)(a):

- (1) the date of the relevant *agreement* will be the date of the election;
- (2) the description of the *goods* will be the *components* purchased by us for the purposes of the relevant *agreement*; and
- (3) the *term*, *rent* and the *residual value* (as relevant) will be determined by us and set out in the *schedule* for the relevant *agreement*.

24.5 You authorise us to complete the *schedule* for the relevant *agreement* in the manner provided for in clause 24.4 to reflect what is intended or agreed between you and us for the *lease agreement* or *rental agreement*.

24.6 On completion of the *schedule* for the *rental agreement* or *lease agreement* (as applicable) in accordance with clause 24.2 we will forward a copy to you. You undertake to ensure that each *rental agreement* or *lease agreement* provided to you is duly executed by you or an *authorised person*.

24.7 You irrevocably appoint us and each of our managers from time to time to act as your attorney to:

- (1) execute on your behalf a *rental schedule* or a *lease schedule* (as relevant) on the terms provided for in this master agreement in respect of the *components*; or
- (2) complete the *schedule* for a rental agreement or lease agreement (as applicable) already executed by you.

24.8 If you elect to pay out the relevant *escrow agreement* under clause 24.1 or clause 24.2, you must pay to us the amount contemplated in clause 22.5. If we have taken possession of and sold or disposed of any *component*, then the provisions of clause 22.6 shall apply.

24.9 If you fail to make an election in accordance with clause 24.1, you must pay out the relevant *escrow agreement* by paying to us the amount contemplated in clause 22.5

within 7 *business days* of the date by which the election should have been made. If *we* have taken possession of and sold or disposed of any *component*, then the provisions of clause 22.6 shall apply.

24.10 If *you* fail to pay out the relevant *escrow agreement* in accordance with clause 24.9, *we* may terminate the relevant *escrow agreement* and *you* must pay to *us* the amount contemplated in clause 22.5.

Part C - Guarantee and Indemnity

25. Guarantee and Indemnity

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

The *Banking Code of Practice* will apply to this clause 25 in relation to a *guarantor* that is an individual if the *Banking Code of Practice* applies to this master agreement and a relevant *agreement*.

The *Banking Code of Practice* will apply to this master agreement and a relevant *agreement* if the customer is an individual or a small business as defined in the *Banking Code of Practice*.

When the *Banking Code of Practice* applies:

- (a) the *guarantor* may have rights to end, withdraw from, or limit this guarantee and indemnity; and
- (b) the *guarantor* should note that there are financial risks involved in entering into providing the guarantee and indemnity under this clause 25, and the *guarantor* may refuse to provide this guarantee and indemnity.

We recommend that the *guarantor* asks its legal and financial adviser about this. We will provide information about the customer and this master agreement in accordance with the *Banking Code of Practice*, and upon request.

If:

- (a) the *Banking Code of Practice* would otherwise make a provision of this guarantee and indemnity illegal, void or unenforceable; or
- (b) a provision of this guarantee and indemnity would otherwise contravene a requirement of the *Banking Code of Practice* or impose an obligation or liability which is prohibited by the *Banking Code of Practice*,

this guarantee and indemnity is to be read as if that provision were varied to the extent necessary to comply with the *Banking Code of Practice* or, if necessary, omitted.

25.1 In consideration of *us* at the request of the *guarantor* entering into this master agreement and each *agreement*, the *guarantor* guarantees to *us*:

- (1) the due and punctual performance by *you* of *your* obligations under this master agreement and each *agreement* or any holding over under each *agreement*; and
- (2) except where the *guarantor* has limited its liability under this guarantee and indemnity (as specified in the *schedule*), the payment of all money owing under this master agreement and each *agreement*.

25.2 Except where the *guarantor* has limited its liability under this guarantee and indemnity (as specified in the *schedule*), as a separate obligation, the *guarantor* indemnifies *us* against any loss or damage that *we* may suffer or sustain as a result of the non-payment of any money or the non-performance of any of *your* obligations

under this master agreement or each *agreement* or due to *termination* or *expiration* excluding any loss or damage to the extent caused by *our* mistake, error, fraud, negligence or wilful misconduct or the mistake, fraud, negligence or wilful misconduct of *our* employees, officers, contractors or agents, or any receivers *we* appoint in respect of any property.

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

- (1) the obligations of the *guarantor* under this guarantee and indemnity are principal obligations imposed on the *guarantor*; and
- (2) *we* have the right to make a *claim* or demand on the *guarantor* under this guarantee and indemnity without having first taken any proceedings against *you* or any other person.

25.4 Except to the extent the *guarantor* has a right conferred by the *Banking Code of Practice*, this guarantee and indemnity is not to be considered as wholly or partly discharged unless and until all of the *guaranteed money* has been paid in full.

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

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

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

25.7 If *you* become *insolvent* or bankrupt:

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

- 25.8 Without limiting clause 25.7, as long as there is money owing under an *agreement*, the *guarantor* may not without *our* prior written consent, which will not be unreasonably withheld or delayed:
- (1) in reduction of its liability under this guarantee and indemnity, raise a defence, set-off or counterclaim available to itself, *you* or a co-surety or co-indemnifier against *us* or claim a set-off or making a counterclaim against *us*; or
 - (2) make a claim or enforce a right to claim, to be entitled (whether by way of subrogation or otherwise) (including, without limitation, to a *security interest* or to the benefit of another guarantee, indemnity (or another assurance against loss similar to a guarantee or indemnity) or a *security interest*) against *you* or any other *guarantor* or against their estate or property:
 - (a) in connection with this master agreement or each *agreement* including or any other amount payable under this guarantee (for example, the *guarantor* may not try to enforce or require the enforcement of any *security interest* we have taken that secures amounts including money owing under an *agreement*); or
 - (b) in favour of a person other than *us* in connection with any obligations of, or any other amounts payable, by *you* to, or for the account of, that other person; or
 - (3) prove in competition with *us* in the event of *your insolvency* or that of any other *guarantor* whether in respect of an amount paid by the *guarantor* under this guarantee and indemnity, in respect of another amount (including the proceeds of a *security interest*) applied by *us* in reduction of the *guarantor's* liability under this guarantee and indemnity, or otherwise; or
 - (4) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a *security interest* or guarantee or a share in it now or subsequently held for the money owing under an *agreement* or other money payable under this guarantee and indemnity.
- 25.9 If we ask, the *guarantor* agrees to notify any relevant person of the terms of this clause and other parts of this guarantee that may be relevant. The *guarantor* also authorises *us* to do so at any time in its discretion and without first asking the *guarantor* to do it. This applies despite anything else in this guarantee.
- 25.10 This clause continues after this guarantee ends.
- 25.11 If, under any law relating to *insolvency* or for any other reason, a person claims that a transaction (including a payment) in connection with this guarantee and indemnity or this master agreement or any *agreement* is void, voidable, unenforceable or defective for any reason and the claim is upheld, conceded or settled, then except to the extent caused by *our* mistake, error, fraud, negligence or wilful misconduct or the mistake, fraud, negligence or wilful misconduct of *our* employees, officers, contractors or agents, or any receivers we appoint:
- (1) *we* are immediately entitled as against the *guarantor* to the rights in respect of any money owing under that *agreement* to which *we* were entitled immediately before the transaction; and
 - (2) at *our* request, the *guarantor* agrees to do anything (including signing any document) to restore *us* to *our* position immediately before the transaction (including, without limitation reinstating this guarantee or an *agreement*).
- 25.12 Except to the extent the *guarantor* has a right conferred by the *Banking Code of Practice* this guarantee and indemnity is not impaired or discharged by:
- (1) any variation (with or without the consent of the *guarantor*) made to an *agreement*;
 - (2) any breach, wilful or otherwise, of any of your obligations under an *agreement* and whether with or without your consent or knowledge, or the consent or knowledge of any *guarantor* or *us*;
 - (3) the granting of any time, credit, forbearance, indulgence, or concession to *you* or to any *guarantor*;
 - (4) the compromise, waiver, or rearrangement by *us* of any of *your* obligations under an *agreement* or the obligations of any *guarantor*;
 - (5) the unenforceability of an *agreement* against *you* (in whole or in part) or any guarantee and indemnity against any other *guarantor*;
 - (6) the fact that all or any part of the money owing by *you* may not be recoverable or may cease to be recoverable from *you* or any other person liable for that money (other than because the money has been fully paid);
 - (7) the liquidation, death, insolvency or bankruptcy of *you* or any *guarantor*;
 - (8) the avoidance for any reason of any payment by *you* or on your behalf or by any *guarantor*;
 - (9) the transfer or assignment of the benefit of this master agreement or any *agreement* to any person or corporation;
 - (10) *you* or any *guarantor* being under any legal disability; or
 - (11) any other matter or thing that but for this provision could or might operate to abrogate the effects of the provisions of this guarantee and indemnity.
- 25.13 If there is more than one *guarantor*, then the obligations under this guarantee and indemnity bind each of them separately and any two or more of them jointly.

Part D - General Conditions

26. General

- 26.1 *You* indemnify *us* against any liability or direct *loss we* may incur excluding any loss or damage to the extent caused by *our* mistake, error, fraud, negligence or wilful misconduct:
- (1) arising from the use or possession of the *goods* by *you* or by any other person; or
 - (2) arising out of any failure by *you* to perform any of *your* obligations under this master agreement or any *agreement*; or
 - (3) arising from *us* having to seize or store the *goods* or *us* owning the *goods* (including registering *our* interest in the *goods*); or
 - (4) arising from *our* reliance, or *us* acting in good faith, on any information *you* give *us* or communications sent to *us* (in any form) that *we* receive from *you*, the *guarantor* or a supplier of *goods*.
 - (5) *You* have to pay these amounts within ten *business days* after we ask for them.
- 26.2 Without limiting clause 26.1, *you* indemnify *us* against any liability or direct *loss we* may incur (including loss of margin), including in relation to *our* funding of the purchase price of the *goods* the subject of a *lease agreement* or a *rental agreement*, where the *goods* are delivered after the *commencement date*, or *your* failure to accept delivery of the *goods* after *we* have paid the purchase price of the *goods*. *Your* liability under this indemnity excludes any loss or damage to the extent caused by *our* mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of *our* employees, officers, contractors or agents, or any receivers *we* appoint. *You* acknowledge that *we* may include an amount in respect of such liability or loss in *our* calculation of the *rental instalments*. *You* have to pay these amounts within ten *business days* after we ask for them.
- 26.3 *You* acknowledge that where an agent, dealer, broker, or other person has introduced *you* to *us*, or *we* enter into this master agreement or any *agreement* as agent of another party, *we* may pay or receive a commission, fee or remuneration to or from that agent, dealer, broker, or other party. *You* consent to the payment and acknowledge that in calculating the money payable by *you* under that *agreement*, *we* may take into account that payment.
- 26.4 If an *agreement* specifies when you must perform an obligation, you must perform it by the time specified. You must perform all other obligations promptly.
- 26.5 If any clause or part of a clause of this master agreement or any *agreement* is illegal, void or unenforceable or prohibited then the rest of the master agreement or part of any agreement is to be interpreted as if that clause or part of the clause is not part of this master agreement or any agreement.
- 26.6 If any law requires *you* or any *guarantor* to make any deduction or withholding from any payment in respect of any *agreement*, or the guarantee and indemnity in respect of that *agreement*, then:
- (1) *you* or that *guarantor*, as applicable, agree to deduct the relevant amount (and any further deduction applicable in relation to this clause 26);
 - (2) *you* or that *guarantor*, as applicable, agree to pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipts to *us*;
 - (3) *you* or that *guarantor* must pay to *us* any additional payments necessary to ensure that after making the withholding or deduction *we* receive a sum equal to the sum *we* would have recovered if no deduction or withholding had been made; and
 - (4) *you* or that *guarantor* indemnify *us* against any failure by *you* or the *guarantor* to make the deduction or withholding.
- 26.7 *You* must provide *us* with any financial or other information *we* reasonably request in connection with this master agreement or any *agreement*, the *goods* or *components*, any *security interest* created by any *agreement* or *your* or a *guarantor's* financial affairs or business which *we* reasonably consider relevant to the transactions contemplated by any *agreement*, within 14 days of notice to *you* from *us*.
- 26.8 *You* must comply with the *special conditions*.
- 26.9 If the *Banking Code of Practice* applies to *you* and it requires *us* to issue statements, *we* will issue them to *you*:
- (1) If *you* have a *lease agreement* or *rental agreement*, at least every twelve months;
 - (2) in any other case, at least every 6 months.
- ### 27. Overdue interest and costs
- 27.1 *You* must pay to *us* except to the extent caused by our mistake, error, fraud, negligence or wilful misconduct or the mistake, error, fraud, negligence or wilful misconduct of our employees, officers, contractors or agents, or any receivers *we* appoint on request our reasonable *costs* in connection with:
- (1) the negotiation, preparation, execution and registration of this master agreement and each *agreement*; and
 - (2) any consent, approval, exercise or non-exercise of rights, waiver, variation, release or discharge in connection this master agreement and each *agreement*.
- 27.2 *You* must pay to *us* on request our reasonable *costs* incurred by *us* in connection with:
- (1) enforcing *our* rights under each *agreement* including *our* rights due to *expiration* or *termination*; or
 - (2) doing anything in connection with any enquiry by an authority involving *you*.
- 27.3 *You* must pay to *us* on demand any taxes and fees (including registration fees) and fines and penalties in respect of fees paid, or that *we* reasonably believe are payable, in connection with each *agreement*.
- 27.4 If *you* fail to pay any money payable under an *agreement* when due (or any judgment in which that money becomes merged), *we* can charge *you* a higher interest rate on that amount. The higher rate of interest is called the *overdue rate*.
- 27.5 Interest at the *overdue rate* is calculated from the due date until the date of actual payment and is payable on demand.

- 27.6 Where an *agreement* you have with us uses the terminology 'default interest' or 'past due interest' these have the same meaning as paying interest at the *overdue rate* as applicable.
- 27.7 If *you* are a farmer and *we* have provided *you* with a facility that is used for the purposes of a farming operation, *we* will not charge *you* interest at a higher rate on overdue amounts (or fees instead of overdue interest) during any period that the land *you* use for that farming operation is in drought or natural disaster, where the Banking Code of Practice requires this.
- (1) However, *you* may have to tell *us* about the circumstances before *we* can do these things or provide *you* with a refund.
 - (2) In this clause the words "farmer" or "farming operation" have the meaning given to them in the Banking Code of Practice.
28. Money received by us
- 28.1 If an *event of default* has occurred under an *agreement* and *we terminate* that *agreement*, then *we* may use any money *we* receive in excess of the amounts required by *us* to satisfy *your* obligations under that *agreement* to reduce any other money *you* owe *us* under any other *agreement*.
29. Remedy of breaches by you
- 29.1 If *you* breach any of *your* obligations under an *agreement*, *we* may at *our* discretion (but without any obligation to do so) take any steps *we* consider reasonably necessary to remedy that breach.
- 29.2 Any money spent by *us* in exercising *our* rights under clause 29.1 incurs interest at the *overdue rate* from the date of payment by *us* until the date of repayment by *you*. That money is repayable by *you* on demand.
30. Duties and taxes
- 30.1 *You* must pay to *us* or reimburse *us* on demand all stamp duty and other duties and any taxes that *we* have paid or that *we* reasonably believe are payable that in any way relate to this master agreement and any *agreement*, any supply made under an *agreement*, or any transaction contemplated by an *agreement*.
- 30.2 Without limiting clause 30.1, if *we* become liable for any *GST* in respect of anything *we* do or anything that the *GST Law* deems *us* to have done under or in connection with this master agreement or any *agreement*, then *you* must pay to *us* an additional amount equal to the *GST* payable by *us* on that supply. This includes any liability *we* may incur in relation to the sale of the *goods* on *termination* or *expiration*. If requested by *you*, *we* will promptly provide to *you* a tax invoice complying with the relevant *GST* legislation.
- 30.3 Payment under clauses 30.1 and 30.2 must be made by the time the consideration for the relevant supply giving rise to the liability is to be provided under this master agreement or an *agreement*.
- 30.4 Unless expressly stated, all amounts and payments to be provided under or in connection with the master agreement or any *agreement* have been calculated exclusive of *GST*.
- 30.5 If an adjustment event arises in respect of a taxable supply made by *us* under the master agreement or any *agreement*, the amount payable by *you* under this clause 30 will be recalculated to reflect the adjustment event and a payment will be made by *you* to *us* or by *us* to *you* as the case requires.
- 30.6 Where *you* are required under the master agreement or any *agreement* to pay or reimburse *us* for any of *our* expense or outgoing, the amount to be paid or reimbursed by *you* will be the sum of:
- (1) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which *we*, or to which the representative member for the *GST* group of which *we* are a member, is entitled; and
 - (2) if the payment or reimbursement is subject to *GST*, an amount equal to the *GST* on that payment or reimbursement.
31. Acknowledgments
- 31.1 *You* and the *guarantors* acknowledge that *we* enter into each *agreement* on the basis of the details as set out in each *schedule* submitted by *you* to *us* are true and correct in all respects. It is therefore important *you* ensure each *schedule* *you* submit to *us* is accurate.
- 31.2 *You* must at all times duly and punctually comply in all respects with *your* obligations under each *agreement*.
32. Trusts
- 32.1 The provisions of this clause apply to *you* or any *guarantor* entering into a *trust agreement* in the capacity as a *trustee* of a *trust*.
- 32.2 The *trustee* warrants to *us* that:
- (1) the *trustee* is the only trustee of the *trust* and enters into the *trust agreement* both in the *trustee's* personal capacity and as *trustee* of the *trust*;
 - (2) the *trustee* has unrestricted authority and power to enter into the *trust agreement*;
 - (3) entering into the *trust agreement* is in the due and proper administration of the *trust*, is for the benefit of the beneficiaries of the *trust* and the beneficiaries of the *trust* have consented to the entry into the *trust agreement*;
 - (4) the performance by the *trustee* of the *trustee's* obligations under the *trust agreement* has been duly authorised in accordance with the terms of the *trust*; and
 - (5) no limitation or restriction exists in respect of the *trustee's* rights to be fully indemnified from the *trust* assets for the *trustee's* obligations incurred under the *trust agreement* and the *trust* assets are sufficient to satisfy that right of indemnity and all other obligations in respect of which the *trustee* has a right to be indemnified out of the *trust* assets.
- 32.3 The *trustee* must not, so far as able to do so, permit any of the following to occur without *our* prior written consent:
- (1) any variation, replacement, or limitation of the terms of the *trust deed*;
 - (2) the *trustee's* removal as *trustee* or the appointment of another trustee of the *trust* whether or not in conjunction with the *trustee*; or
 - (3) any distribution, transfer or setting aside of any part of the income or capital of the *trust*.

33. Dealing with interests

33.1 You must not cause or permit any person to acquire an interest in *your* rights or obligations under this master agreement or any *agreement*. You may not assign all or any of *your* rights and benefits or novate or otherwise transfer *your* rights or obligations under any *agreement* to any person without *our* consent.

33.2 We may assign all or any of *our* rights and benefits under this master agreement or any *agreement* to any person, including a securitisation or funding vehicle, or a sub-participant of *our* participation under this master agreement or any *agreement*, without *your* consent. We may also novate or otherwise transfer all or any of *our* rights or obligations under this master agreement or any *agreement* to any person. We may only exercise our right to assign, novate or transfer under this clause if in our reasonable opinion the assignment or novation will not materially prejudice *your* rights or obligations under this master agreement or any *agreement*.

33.3 We may provide any person to which *our* rights or obligations may be assigned, novated, or transferred with any information necessary to affect that securitisation so long as they agree to keep that information confidential.

33.4 You irrevocably authorise *us* to sign any documents on *your* behalf and do anything else *we* consider appropriate to affect a novation under this clause.

34. Financier

34.1 We enter into this master agreement and any *agreement* as the provider of the financial accommodation. Any security *we* hold for the accommodation may be registered either in *our* name or in one of *our* subsidiaries, nominees, or agents.

34.2 In consideration of *us* providing you with financial accommodation under the agreement, you grant *us* a security interest in the goods or components (as the case may be) as security for the payment of all moneys and the performance of all *your* obligations under the agreement.

35. Authority to complete and amend

35.1 You and the *guarantor* authorise *us* to:

- (1) fill in any blanks in this master agreement (including inserting *serial numbers* and model numbers) or any *agreement* and any document signed in connection with this master agreement or any *agreement* (such as financing statements, financing change statements, amendment demands or transfers for the *goods*); and
- (2) make any amendments to any document referred to in clause 35.1(1) to accurately reflect or give effect to the terms of this master agreement or any *agreement* that have been agreed between you and *us*.

36. PPS Act undertaking

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

(1) for you to obtain the highest-ranking priority possible in respect of the *security interest* (such as perfecting a purchase money security interest or perfecting a *security interest* by control); and

(2) to reduce as far as possible the risk of a third party acquiring an interest free of the *security interest* (such as including the serial number in a financing statement for *personal property* that may or must be described by a *serial number*).

36.2 If we ask, you agree to arrange at your expense an audit of the *PPS Act* procedures. We may ask you to do this if we reasonably suspect that you are not complying with this clause.

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

37. Further assurances

37.1 You and the *guarantor* must, and must ensure that each other does anything we ask and consider necessary (such as obtaining consents, signing, and producing documents and getting documents completed and signed) to:

(1) provide more effective security over the *goods*, or any other personal property over which we have a *security interest* for payment of money owing to us in connection with this master agreement or any *agreement*;

(2) bind yourself and any other person intended to be bound under this master agreement or any *agreement*;

(3) ensure that a *security interest* is enforceable, perfected (including registration and where possible, by control in addition to registration under the *PPS Act*) and otherwise effective;

(4) stamp and enable us to apply for any registration, or give any notification, in connection with a *security interest* created by this master agreement or any *agreement* so that the *security interest* has the priority we require;

(5) enable us to exercise our rights in connection with the *security interest*; and

(6) show whether you are complying with this master agreement or any *agreement*.

37.2 You must ensure that any person interested in the *goods* and/or the *components* does likewise.

37.3 Everything you are required to do under this clause is at your expense. You agree to pay or reimburse our costs in connection with anything you are required to do under this clause but have not done.

37.4 You agree that clauses 25.11, 36 and this clause 37 apply to anything we ask you to do in connection with *PPS law*.

37.5 If a *security interest* in connection with the *goods* in the form of chattel paper (as defined in the *PPS Act*) is held by you or arises in your favour (whether or not as a result of a breach by you under this master agreement or any *agreement*), you grant a *security interest* in the chattel paper to us for the purpose of securing payment of any money you owe us in connection with this master agreement or any *agreement*. The *security interest* created by this clause is a charge and you may not transfer, dispose, or otherwise deal with the chattel paper

- or allow another *security interest* to exist over it. *You* must deposit with *us* all original documents of title comprising the chattel paper and any other documents *we* request relating to the chattel paper.
- 37.6 *You* must notify *us* in writing of any change in *your* name at least 14 days before *you* propose to change *your* name.
- 38. Contracting out of certain provisions of the PPS Act**
- 38.1 *You* agree that *we* need not comply with the following sections of the *PPS Act*:
- (1) section 95 (notice of removal of *accession*);
 - (2) section 118 (enforcing *security interests* in accordance with land law decisions);
 - (3) section 121(4) (enforcement of liquid assets - notice to grantor);
 - (4) section 125 (obligation to dispose or retain *goods*);
 - (5) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor;
 - (6) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (7) subsection 132(4) (statement of account if no disposal);
 - (8) section 135 (notice of retention); or
 - (9) any other provision of the *PPS Act* notified to *you* by *us* after the date of this master agreement or any *agreement*,
 - (10) to the extent the law permits them to be excluded.
- 38.2 *You* agree that *we* may not exercise rights under section 143 of the *PPS Act* to the extent the law permits them to be excluded.
- 38.3 *You* agree that *we* need not give any notice required under the *PPS Act* (including a notice of a verification statement) unless the requirement to give the notice cannot be excluded.
- 39. Direct Debit Request – Service Agreement**
- The Direct Debit Request Service Agreement set out in this clause applies if *you* complete the Direct Debit Request in the *schedule*.
- 39.1 Drawing Arrangement
- (1) *We* undertake to periodically debit *your* nominated account for any amount owing under an *agreement*.
 - (2) *We* will draw the required drawing on the due date. A drawing fee as set out in the Fees Schedule marked “2” will apply to the direct debit arrangement. If any drawing falls on a public holiday or a non-business *day*, the drawing will be debited to *your* account on the prior *business day*.
 - (3) *We* may vary any details of this agreement or a direct debit request at any time. *We* will notify *You* about changes as soon as reasonably possible (which may be before or after the change is made) or, where the change is unfavourable to *You*, by providing *You* with 30 days’ notice. *We* can also give *you* a shorter notice period (or no notice) of an unfavourable change if it is reasonable for *us* to manage a material and immediate risk.
- (4) *We* will not change the amount or frequency of the drawings without *your* prior approval.
 - (5) *We* reserve the right to cancel the direct debit if three or more drawings are returned unpaid by *your* nominated financial institutions and to arrange with *you* an alternate payment arrangement.
 - (6) *We* will keep all information pertaining to *your* nominated account at the financial institution, private and confidential.
- 39.2 *Your* Rights: -
- (1) *You* may terminate the direct debit arrangements outright or stop a payment by giving *us* written notice or notice to *your* financial institution. Notice should be received by *us* at least 5 business days prior to the date.
 - (2) *You* may request a change to the drawing amount and the frequency by contacting *us* and advising of *your* requirements no less than 5 working days prior to the date. Note any change does not alter *your* responsibility to meet the required payment owing under *your agreement*. Where *you* consider that a drawing has been initiated incorrectly *you* may take the matter up directly with *us* or lodge a Direct Debit Claim through *your* financial institution.
- 39.3 *Your* responsibilities: -
- (1) It is *your* responsibility to ensure that sufficient cleared funds are available in the nominated account to meet the drawing on its due date. Failure to do so may result in the drawing being dishonoured by *your* financial institution and may incur a dishonour fee as set out in the Fees Schedule marked “2”. In such circumstance *we* reserve the right to also charge a dishonour fee.
 - (2) It is *your* responsibility to ensure the authorisation given to draw on the nominated account is identical to the account signing instructions held by the financial institutions where the account is based.
 - (3) It is *your* responsibility to advise *us* if the account nominated by *you* to receive the drawings is transferred or closed.
 - (4) It is *your* responsibility to arrange with *us* a suitable alternate payment method if *you* wish to cancel the drawing.
- 40. Notices**
- 40.1 A notice or other communication connected with this master agreement and each *agreement* (“*notice*”) must be in writing and given by a party, its *authorised officer* or its lawyer.
- 40.2 A *notice* must be:
- (1) delivered to the recipient’s address as set out in the *schedule*;
 - (2) posted to the recipient’s address as set out in the *schedule* by prepaid ordinary post or airmail;
 - (3) sent by email to the recipient’s email address as set out in the *schedule*.
- 40.3 Service of a *notice* is considered to have occurred, if sent as a:
- (1) delivered letter – at the time it is delivered;

- (2) posted letter – on the 2nd *business day* after posting or the 7th *business day*, if posted to or from a place outside Australia;
- (3) email –
 - (a) when the sender receives an automated message confirming delivery; or
 - (b) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

40.4 A *notice* may be given and signed by a party's lawyer and delivered to a party's lawyer by any of the means listed in this clause or to the lawyer's business address, email address or mail address.

41. Payment

41.1 *You* and the *guarantor* must not withhold any payment under this master agreement or any *agreement* or make any deduction from them, for any reason including because *you* or the *guarantor* claim to have a set-off, counterclaim or other right against *us* or any other person.

41.2 Any payment by *you* or the *guarantor* to *us* is to be taken to have been made only when *we* receive it in cleared funds and in the manner and at the places *we* direct.

42. Confidentiality

42.1 *You* and *we* agree not to disclose information provided by *us* or *you* that is not publicly available or the existence of or contents of this master agreement and any *agreement* except:

- (1) in connection with any person exercising rights or dealing with rights or obligations under this master agreement and any *agreement* (including in connection with preparatory steps such as negotiating with any potential assignee of *our* rights or other person who is considering contracting with *us* in connection with this master agreement and any *agreement*); or
- (2) to *our* officers, employees, legal and other advisers, and auditors; or
- (3) to any party to this master agreement and any *agreement* or any related entity (as defined in the *Corporations Act*) of any party to this master agreement and any *agreement*, provided the recipient agrees to act consistently with this clause; or
- (4) to any person to whom *we* assign or otherwise transfer our rights and obligations under this master agreement and any *agreement*; or
- (5) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (6) any disclosure the disclosing party reasonably believes is required by any law or stock exchange (except this paragraph does not permit *us* to disclose any information of the kind referred to in section 275(1) of the *PPS Act* unless section 275(7) of the *PPS Act* applies).

42.2 Each party consents to disclosures made in accordance with this clause.

43. Waiver

43.1 Any waiver by *us* of *our* rights under this master agreement and any *agreement* will not be effective unless in writing.

43.2 No waiver or indulgence granted by *us* under this master agreement and any *agreement* affects *our* rights in relation to any further breach of this master agreement and any *agreement*.

44. Variation

44.1 *We* may need to make changes to this master agreement and each *agreement*.

44.2 *We* can make a change to this master agreement or any *agreement* if:

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

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

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

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

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

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

44.8 If *you* are not satisfied with any change made by *us* under this clause 44 (other than a change to interest rates where the interest rate has not been fixed), *you* can choose to terminate the agreement by giving *us* notice and paying the *termination amount*. *We* will not charge *you* any fees to terminate the agreement or discharge any securities, except our reasonable third-party costs incurred in discharging any securities.

45. Consents

45.1 Whenever a provision of this master agreement specifies that *our* consent or approval is required or that *we* may direct or require *you* to do or not do some act or thing, or that *we* will determine whether an event has occurred or not occurred, unless this master agreement specifies otherwise, *we* will act reasonably and without unreasonable delay in determining whether or not to give that consent or approval, determining whether that event has occurred or directing *you* to take some action or satisfy a requirement of *ours*. *We* may provide any consent or approval unconditionally or subject to such conditions as *we* reasonably determine, and *you* must comply with any conditions *we* impose.

46. Governing law

The law of the *state* governs this master agreement and any *agreement*, and the parties submit to the non-exclusive jurisdiction of the courts of the *state* and of the Commonwealth of Australia.

47. Banking Code of Practice

47.1 Application

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

47.2 Disputes

If you have a problem or dispute:

(1) Our service commitment

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

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

(a) How to contact us

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

- Contact your dedicated finance specialist
- Call us on 1300 160 160, 24 hours a day, 7 days a week
- Complete the online complaints form at www.boqspecialist.com.au/feedback
- Contact our Customer Relations Department via:

Email: customer.relations@boqs.com.au

Call: 1800 663 080

Write to: Customer Relations
Reply Paid 2258
Brisbane QLD 4001

(b) How will your complaint be handled?

If we cannot solve your problem on the spot, we will let you know who is handling

your complaint and how long it is likely to take for it to be resolved.

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

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

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

Call: 1800 931 678

Email: info@afca.org.au

Online: www.afca.org.au

Write to: GPO Box 3
Melbourne VIC 3001

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

47.3 Financial difficulty

- (1) This clause 47.3 applies to the extent that the *Banking Code of Practice* applies to this master agreement.
- (2) *We* understand that some situations can bring about financial stress, including illness or injury and changes to employment. If *you* are experiencing financial difficulties, please contact *us* to discuss options and solutions.

48. Meaning of words and interpretation

48.1 In this master agreement or any *agreement*:

administration fee means, in respect of certain *components* acquired by us pursuant to the terms of an *escrow agreement*, the fee notified to *you* by *us* from time to time based on the purchase price of those *components*;

agreement means a *lease agreement*, a *rental agreement*, or an *escrow agreement* (as the context requires) and any extensions, variations, or renewals of those agreements (whether or not the extensions, variations or renewals were made with the consent or knowledge of the *guarantor*);

approved purpose means, in relation to an *escrow agreement*, the “approved purpose” set out in the *schedule* for that *escrow agreement*;

Australian Sanctions Laws means:

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

authorised person means, for an agreement:

- in *your* or the *guarantor's* case:
 - if *you* or the *guarantor* is a company, its director or secretary; or
 - if *you* or the *guarantor* is a partnership, each partner; or
 - if *you* or the *guarantor* is an individual, *you* or the *guarantor* (respectively); and
 - any other persons whose name, signature and title is notified to *us* in writing (including without limitation those persons whom *you* have notified *us* are “Authorised Signatories” under or in relation to an *escrow agreement schedule*), except if *you* or the *guarantor* (as relevant) have notified *us* that a person ceases to be such an authorised person; and
- in *our* case, a director or secretary, an officer whose title contains the word “director,” “chief,” “head,” “president,” “manager” or a person performing the functions of any of them;

base rate means, in relation to an *escrow agreement*, the rate determined by *us* from time to time acting in good faith as to *our* costs of funds for providing the facility or other funding as applicable;

break costs means an amount equal to *our* reasonable estimate of *our* loss arising from the early *termination* of an *agreement*. We calculate it by reference to factors such as any movement in *our* cost of funds at the time of early *termination* compared with the start of the *term* of that *agreement*. Amounts calculated in respect of the remainder of the original *term* of the *agreement* are discounted to the net present value at the rate equivalent to *our* cost of funds at the early *termination* date. For more detailed information about how we calculate break costs, please refer to *our* Break Costs Fact Sheet, available on *our* website at: www.boqspecialist.com.au/important-information;

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

claim includes any claim, loss or damage of any kind including consequential loss;

commencement date, for an *agreement*, means the date we accept *your* offer to enter into that *agreement* under clause 1.4 and as set out in the *schedule* for that *agreement*;

common payment date means any date from time to time agreed on by *you* and *us* for the payment of *rental instalments* under any *agreement*;

component means, in relation to an *escrow agreement*, each of the materials, services and other items required for the construction or installation in accordance with the *approved purpose* as described in the *escrow agreement schedule*;

controller has the meaning it has in the *Corporations Act*; *Corporations Act* means the Corporations Act 2001 (Cth);

costs include charges, expenses, fees and costs and includes all costs of legal advisors on a full indemnity basis and all costs of repossession, storage, repair and inspection of any *goods*;

deposit means the amount, if any, specified in the *schedule* for an *agreement*, and includes both the cash amount and any trade in or non-cash consideration;

enforcement proceedings means a person:

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

escrow agreement means an agreement on the terms of this master agreement and a corresponding *escrow agreement schedule*;

escrow agreement schedule means, for an *escrow agreement*, a schedule entitled “Master Asset Finance Agreement – Escrow Agreement Schedule” that is part of that *escrow agreement* and describes the *components*, *holding rate*, *purchasing period*, *purchase price limit* and other matters;

escrow services fee means, in respect of an *escrow agreement*, the fee as described in the fee schedule Annexure 2 (it is intended to remunerate *us* for our services in purchasing *components* pursuant to the *escrow agreement*, and is taken into account in determining *rent*);

event of default means, for an *agreement*, the occurrence of any of the events listed in clause 16.1. If Part E applies to an *agreement*, event of default includes the additional events of default set out in clause 50.1 of Part E;

expiration means the expiry of the *term* and *expired* has a corresponding meaning;

fee schedule means the schedule of fees that may be payable by *you* and are set out in Annexure marked Schedule 2;

first instalment of rent means for an *agreement*:

- if we have not agreed on a common payment date, rent for one payment period as referred to in the schedule for that agreement; or
- if we have agreed on a common payment date, rent from the commencement date of that agreement until the next common payment date and (unless otherwise agreed by us) for one payment period after that;

funding notification means any notice in writing from *you* to *us* in respect of *components* you notify *us* to acquire from a *supplier*.

goods means, for an *agreement*, the goods described in the *schedule* to that *agreement*;

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

GST and *GST Law* has the same meaning they are given in the *A New Tax System (Goods and Services Tax) Act*

1999. GST Law also includes any applicable rulings issued by the Commissioner of Taxation;

guaranteed money means all amounts payable by *you* under this master agreement and any *agreement*, and *our* reasonable enforcement expenses, reasonably incurred, in enforcing the guarantee and indemnity in Part B of this master agreement;

guarantor means, for an *agreement*, the person or persons as described in the *schedule* to that *agreement*, together with any other person who from time to time guarantees due performance by *you* under that *agreement*. If there is more than one person who is a *guarantor* within the meaning of this clause, then *guarantor* means all of those persons jointly and each of them severally;

holding interest means, in relation to an *escrow agreement*, the interest payable on the aggregate amount paid by *us* to purchase the *components* as calculated in accordance with clause 23;

holding rate means, in relation to an *escrow agreement*, the rate specified in the *schedule*;

implicit financed amount outstanding means, at any time, the amount *we* calculate as the total of the amount financed by *us* that *we* would have received after that time if the *agreement* did not *terminate* early and all payments under it had been made on their due date, plus, without double counting, in respect of a *lease agreement* or a *rental agreement*, the *residual value*;

Income Tax Assessment Act means the Income Tax Assessment Act 1936 (Cth) or the Income Tax Assessment Act 1997 (Cth), as the context requires;

A person is *insolvent* if:

- it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act*); or
- it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property; or
- it is subject to any arrangement, assignment, moratorium, 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 *us*); or
- an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the above mentioned provisions of this definition of *insolvent*; or
- it is taken (under section 459F(1) of the *Corporations Act*) to have failed to comply with a statutory demand; or
- in the case of an individual, commits an act of bankruptcy, enters into a composition with their creditors, is declared or becomes bankrupt; or
- 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 *we* reasonably deduce it is so subject); or

- it is otherwise unable to pay its debts when they fall due; or
- something having a substantially similar effect to any of the above happens in connection with that person under the law of any jurisdiction, and

insolvency has a corresponding meaning.

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

large business transaction means any *agreement* where:

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

lease agreement means any *agreement* to lease *goods* from *us* on the terms of this master agreement and a corresponding *lease schedule*;

lease schedule means, for a *lease agreement*, a *schedule* entitled "Master Asset Finance Agreement – Lease Schedule" that is part of that *lease agreement* and describes the *goods*, *rental instalments*, *residual value* and other matters;

loss includes any liability or loss, and any *costs* (including on account of funds borrowed, contracted for or used to fund any amount payable or any amount in respect of any swap or hedge by *us* in connection with *our* purchase of the *goods*, this master agreement or any *agreement*) and any *taxes* and includes any notional amount payable arising from any swap, hedge or funding transaction between *our* internal departments or sections.

monetary default means an event of default referred to in clause 16.1(1):

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

net sale proceeds means the proceeds of the sale of the *goods* net of all taxes, costs and expenses (including legal fees and expenses and *our* usual marketing fees and actual expenses) (other than taxes on *our* net income) incurred or paid by *us* in connection with that sale.

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

offer means an offer to enter into an *agreement*;

overdue rate means a rate that is set out in the *schedule* to this *agreement*;

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

PPS law means:

- PPS Act;
- any regulations made at any time under the *PPS Act*;

- any provision of the *PPS Act* or regulations referred to above;
- any amendment to any of the above, made at any time; or
- any amendment made at any time to any other legislation as a consequence of a *PPS Law* referred to above;

properly completed supplier's invoice means a supplier's invoice which is:

- addressed to *us*;
- specifies the name of the supplier of the *goods*;
- sets out a full description of the *goods* including any information *we* may require to properly identify the *goods*;
- specifies whether the goods are new or second hand;
- specifies the total purchase price payable for the goods;
- specifies any other information *we* may require; and
- a valid tax invoice.

purchase price means, in relation to an *escrow agreement*, the amount paid by *us* including:

- *GST* for the purchase of the *components*; and
- all holding interest;

as described in the corresponding *schedule*;

purchase price limit means, in relation to an *escrow agreement*, the amount specified in the *escrow agreement schedule* or any greater amount *we* may in *our* absolute discretion approve;

purchasing period means, in relation to an *escrow agreement*, the period specified in the corresponding *escrow agreement schedule*;

rent means the total rent which is specified in the *schedule*;

rental agreement means any agreement to rent *goods* from *us* on the terms of this master agreement and a corresponding *rental schedule*;

rental instalments means, for an *agreement*, the instalments of *rent* calculated as set out in the *schedule* to that *agreement*;

rental schedule means, for a *rental agreement*, a *schedule* entitled "Master Asset Finance Agreement – Rental Schedule" that is part of that *rental agreement* and describes the *goods*, *rental instalments*, and other matters;

residual value means, for a *lease agreement* or a *rental agreement*, the residual value specified in the relevant *schedule*;

schedule means a *lease schedule*, a *rental schedule*, or an *escrow agreement schedule* (as the context requires);

security interest means:

- security for the payment of money or performance of obligations, including a mortgage, charge, encumbrance, lien, pledge,

trust, title retention or deposit arrangement, caveat, trust or power held as security;

- 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;
- 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;
- third party right or interest or any right arising as a consequence of the enforcement of a judgment;
- anything that is defined to be a 'security interest' under *PPS Law*; or
- or any agreement to create any of the above or allow them to exist;

special conditions means, for an *agreement*, the special conditions, if any, referred to in the *schedule* for that *agreement*;

state means the State or Territory specified in the *schedule*;

supplier means the supplier of each *component*;

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

term means the term of an *agreement* as set out for that *agreement* in the corresponding *schedule*;

termination means a termination of an *agreement* by *us* before the expiry of its *term* and *terminate* and *terminated* have corresponding meanings;

termination amount means, for an *agreement* (other than an *escrow agreement*), an amount being the total of:

- the implicit financed amount outstanding under that agreement at the date of termination;
- all rental instalments accrued and due under that agreement at the date of termination but not then paid;
- overdue interest in respect of that agreement calculated as provided for in clause 27;
- all other money owing under or in respect of that agreement;
- the termination fee; and
- break costs (if any);

termination fee means the *termination fee* specified in the Standard Fees Schedule at Schedule 2 to this master agreement;

trust means each trust of which *you* or any *guarantor* is the *trustee*;

trust agreement means for the purposes of clause 32, this master agreement, any *agreement* or the guarantee and indemnity contained in Part C of this master agreement;

trustee means *you* or any *guarantor* who enters into this *agreement* on behalf of a *trust*;

value of the goods means, for an *agreement*, an amount *we* determine, at *our* option, as either:

- the net proceeds of a sale that takes place no later than 3 months after *we* repossess the *goods*, at either a public auction of the *goods* with or without reserve or by private sale to or through a dealer in goods of a similar description; or
- the amount certified to be the bona fide wholesale value of the *goods*, on a date no later than 4 months after *we* re-possess the *goods*, by a dealer in goods of a similar description or a licensed or other competent valuer selected by *us*;

we and *us* means BOQ Specialist – a division of Bank of Queensland Limited ABN 32 009 656 740 AFSL and Australian credit licence No. 244616 as set out in more detail in the *schedule* for an *agreement* and *our* and *us* have corresponding meanings; and

you and *us* means the person described in the *schedule* for an *agreement* as the customer and *your* has a corresponding meaning.

- 48.2 A reference to a person includes a corporation and vice versa.
- 48.3 A reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- 48.4 A reference to "this guarantee and indemnity" means the guarantee and indemnity terms which are set out in Part C.
- 48.5 The "Banking Code of Practice" is a reference to the 2019 version of the Australian Banking Association's Banking Code of Practice including any amendments from time to time which have been published by the Australian Banking Association and formally adopted by *us*.
- 48.6 the "ASIC Act" means the Australian Securities and Investments Commission Act 2001(Cth).
- 48.7 "Including" and similar expressions are not words of limitation.
- 48.8 Words importing the singular include the plural and vice versa.
- 48.9 Words importing one gender include every other gender.
- 48.10 The interpretation of any covenant, clause or word mentioned in this master agreement is not restricted by reference to any other covenant, clause, or word or by the relative position of that covenant, clause or word to any other covenant, clause, or word.
- 48.11 Each covenant by which more than one person covenants or agrees binds each of those persons separately and any two or more of them jointly.
- 48.12 Each reference in this master agreement to any statute, act or ordinance includes each statute, act or ordinance amending, consolidating or in substitution for it.
- 48.13 Headings have been included for ease of reference only and do not restrict or affect the interpretation or any provision contained in this master agreement.
- 48.14 Unless the contrary intention appears in this master agreement or any agreement, where the following terms are used in the context of the *PPS Act*, they have the

meanings they have in the *PPS Act*: account, amendment demand, chattel paper, commercial consignment, control, financing statement, financing change statement, grantor, perfect, personal property, PPS lease, proceeds, purchase money security interest, registration, secured party, serial number, verification certificate.

Part E – Large Business Transactions

This Part E of the Master Asset Finance Agreement applies to Large Business Transactions. It applies in addition to the other parts of the Master Asset Finance Agreement and any *schedule* that applies to your *agreement*.

49. Indemnity

49.1 In addition to the indemnities, *you* grant to *us* in Part A, Part B, Part C or Part D, you indemnify *us* against, and must pay *us* on demand for any liability, direct loss or reasonable costs we suffer or incur:

- (1) in connection with *us* or any person acting on our behalf exercising, or not exercising, rights under an *agreement*;
- (2) or in connection with a *security interest*, or this master agreement;
- (3) as a result of doing anything that we agree to do under any *agreement* at your request or consequent upon your default;
- (4) our reliance on a notice from you or purporting to be from you or from a person authorised by you;
- (5) any loss arising from the reduction in the overall effective rate of return received by *us* under an *agreement* as determined by *us* acting reasonably;
- (6) in connection with an *agreement* which you request not being provided in accordance with your request; or
- (7) under any indemnity we give a controller or administrator appointed:
 - (a) in respect of you or a guarantor providing a security; or
 - (b) over any security interest

49.2 The indemnity from you includes liability, loss or costs of the type referred to above that are suffered or incurred by:

- (1) any receiver or attorney appointed under this *agreement* or a security;
- (2) any of our employees, officers, agents, contractors, or authorised officers; or
- (3) any other person such as a lessee, purchaser, or occupier of the *security interest* to whom we may have a liability in respect of the *security interest*,

but it does not include liability, loss or costs to the extent caused by our or their mistake, error, fraud, negligence, or wilful misconduct.

49.3 You have to pay these amounts within 10 business days after we ask if a judgment, order, or proof of debt in connection with the total amount owing is expressed in a currency other than that in which the total amount owing is due, then you indemnify *us* against, and must pay *us* on demand for:

- (1) any difference arising from converting the other currency, if the exchange rate we use for converting currency when we receive a payment in the other currency is less favourable to *us* than the exchange rate used for the purpose of the judgment, order, or acceptance of proof of debt; and
- (2) the costs of conversion.

50. Events of Default

50.1 In addition to any *event of default* under clause 16.1, it is an *event of default* under this master agreement or any *agreement* if any of the following occur:

- (1) *you* by *your* conduct or in writing inform *us* that *you* are not or do not intend to be bound by that *agreement*;
- (2) *you* fail to comply with any other provision of that *agreement* and that failure continues for 7 days after notice from *us* stipulating that failure;
- (3) *your* failure to assist *us* to apply to register a financing statement in relation to a *security interest* created by this master agreement and any *agreement* in accordance with the *PPS Act*;
- (4) a failure to comply with any requirements under the *PPS Act* in relation to a *security interest* created by this master agreement or any *agreement* which results in *us* not having the highest priority available under the *PPS Act* with respect to that *security interest*;
- (5) *you* repudiate any other hiring or lease *you* have with *us*;
- (6) *you* are in default under any other *agreement*, loan, or financial arrangement with *us* and due to that default, *we* are entitled to *terminate* that other *agreement*, loan or financial arrangement or require that money owing under it become immediately due and payable;
- (7) there is material adverse change in *your* circumstances; or
- (8) *you* breach an essential term or condition of any other *agreement* *you* have with *us*.
- (9) If an *event of default* occurs under an *agreement*, *we* may without prejudice to any of *our* other rights:
 - (10) treat that *agreement* as repudiated;
 - (11) accept the repudiation; and
 - (12) by notice in writing terminate that *agreement* and your right to possession.
- (13) *We* may exercise this right despite any delay or previous waiver by *us*.

51. Escrow Provisions

51.1 *We* have the right to *terminate* *our* obligations under the relevant *escrow agreement* at any time for any reason; and

51.2 *you* acknowledge that there is no agreement, arrangement or understanding between *you* and *us* that *we* may *terminate* *our* obligations under the relevant *escrow agreement* only when a particular event occurs or does not occur.

51.3 If *we* *terminate* under clause 51.1 then:

- (1) *you* must, at *our* election:
 - (a) at *your* expense, deliver any *components* already delivered to *you* back to *us* or as *we* direct; or
 - (b) pay *us* an amount equal to the sum of the *purchase price* paid by *us* (including all *holding interest* up to the date of payment) for *our* purchase of the *components*; and

- (2) *you* release *us* and *you* must procure that *we* are released from any obligations to acquire any further *components*.

51.4 If *we* obtain possession of any *component* under the provisions of clause 51.3(1)(a) then *we* may sell or otherwise dispose of that *component* in whole or in part by public auction, tender or private treaty to or through persons dealing in goods of a similar description and on the terms and conditions *we* think fit. Any amount received by *us* will be applied in reduction of any amount owing by *you* under clause 51.3(1)(b).

51.5 If the aggregate of any amount received by *us* for any sale or disposal under clause 51.4 exceeds an amount equal to the sum of the *purchase price* paid by *us* (including all *holding interest* up to the date of payment) for *our* purchase of the *components*, *we* may remit that excess amount to *you* or at *your* direction.

51.6 If the aggregate of any amount received by *us* for any sale or disposal under clause 51.4 is less than an amount equal to the sum of the *purchase price* paid by *us* (including all *holding interest* up to the date of payment) for *our* purchase of the *components*, *we* may require *you* to pay to *us* an amount equal to the difference between the *purchase price* and the aggregate of the amount received by *us* under clause 51.4.

51.7 Variation

In addition to changes *we* can make to the master facility agreement and to an *agreement* *we* can:

- (1) make changes required to comply with any law, code or guidance or requirement of a regulator, or a decision of a court or other dispute resolution process;
- (2) change interest rates, discount rates or holding rates or overdue rates (including any component of them such a margin). This includes increasing, decreasing, renaming, or substituting rates. It also includes adding, removing, or changing margins;
- (3) change the amount, frequency, timing, or method of calculation of payments;
- (4) change the method or frequency of calculation, or crediting or debiting interest;
- (5) change fees and charges, which includes introducing or removing fees and charges and changing the amount, method of calculation, frequency of charging or timing of payment of them; and
- (6) any other matter or thing expressly permitted elsewhere in this master agreement or any *agreement*.

SCHEDULE 1 – ACKNOWLEDGEMENT AND CONSENT

By signing this Master Asset Finance Agreement, you confirm that you have read and acknowledge the following.

APPLICATION

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

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

CO-BORROWER

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

Co-borrower: As a Co-borrower you are equally responsible for the repayment of the loan. Where the other borrower/s won't or can't repay the loan, you are responsible for repaying the whole loan. This can affect your credit eligibility. Guarantor: A guarantor provides a guarantee, which is a promise to repay the borrower's debt if they are unable to do so. Certain legal protections may apply to a guarantor that would not otherwise apply to a co-borrower.

SCHEDULE 2 – STANDARD FEES SCHEDULE FOR ASSET FINANCE PRODUCTS

The following fees and charges are payable by *You*. If there is any inconsistency between the fees mentioned herein and those mentioned in a lease schedule, a rental schedule, or an escrow agreement schedule (“the schedules”) the fees set out in the schedules prevail. Information on current standard fees and charges is available on request.

Fee	Description of Fee	Amount
Documentation Fee	Charged for set up, rollover or variation of all <i>agreements</i> including escrows agreements.	\$495
SWIFT Fee	Charged if sending payment via SWIFT	\$30
Bank Cheque Fee	Charged if sending payment via Bank Cheque (per bank cheque)	\$25
Discharge Fee	Charged when discharging Personal Property Security registrations (PPSR) (per security)	\$150
Substitution/Assignment/Novation Fee	Charged when substituting, assigning or novating a contract	\$450
Trust Deed Review Fee	Charged when a trust deed requires review	\$220
Application Reassessment Fee	Charged when application is reassessed	\$250
Settlement Cancellation Fee	Charged if settlement has been cancelled	\$150
Variation Fee	Charged for varying the terms of a contract	\$395
Payment Dishonour Fee	Charged each time a cheque or payment made by <i>you</i> is dishonoured	\$45
Arrears Management and Administration Fee	Charged at the end of each month in which <i>you</i> are in default	\$140 per hour per staff required to attend
Direct Debit Processing Fee	Charged for each time a direct debit is received from <i>you</i> .	\$2.99
Information Fee	Charged each time <i>you</i> request us to provide information about <i>your</i> agreement, including statements.	\$80 per hour per staff required to attend
Break costs	Payable if a lease agreement or rental agreement is terminated before expiration of the term of that agreement	Not ascertainable at the <i>commencement date</i>
Termination Fee	Payable if a lease agreement or rental agreement is terminated before expiration of the term of that agreement	\$230
Escrow Services Fee	<p>An escrow services fee is payable at the end of each escrow agreement you make with <i>us</i> under this master agreement.</p> <p><i>You</i> must pay the relevant <i>escrow services fee</i> to <i>us</i> if we terminate the agreement under clause 22.3 or you elect to pay out the escrow agreement under clause 24.8.</p> <p>Otherwise, the escrow services fee will be included in the amount we finance under the corresponding lease agreement or rental agreement, and included in the rent we determine to be payable under that agreement.</p>	<p>1.10% of the total amount of all components acquired by <i>us</i> on <i>your</i> behalf (where the total amount acquired is equal to or less than \$200k)</p> <p>0.80% of the total amount of all components acquired by <i>us</i> on <i>your</i> behalf (where the total amount acquired is greater than \$200k and equal to or less than \$500k)</p> <p>0.50% of the total amount of all components acquired by <i>us</i> on <i>your</i> behalf (where the total amount is greater than \$500k)</p>
Credit Card Acquisition of goods on escrow	Charged when acquiring goods on escrow via BOQS credit card	1.5% of cost of goods
Credit Card Payment Fee	Charged when rental payment made via BOQS credit card	1.5% of payment amount

Fee	Description of Fee	Amount
Special Attendance Fee	Charged if <i>you</i> require any special attendance (for example, the production of the title for any reason, consent to a subsequent mortgage, variation, or substitution of security)	\$450 plus any applicable External Costs ¹

¹ External costs represent the costs incurred by us with a third party and passed onto you