**Guarantee and Indemnity – SMSF Member**

|  |  |
| --- | --- |
| **Lender:** | **BC Invest Loans Pty Ltd**  **ACN 646 785 211** |
| **Borrower:** | **<<Bordetallnames>> ACN <<BORDET1ACN>> ATF <<BORDET1TRUSTNAME>>** |
| **Application Number:** | **<<ApplicationNumber>>** |
| **Loan Number:** | **<<L**OANNUMBER**>>** |

|  |
| --- |
| **WARNING – PLEASE READ CAREFULLY**   * You should seek independent legal and financial advice on the effect of this Guarantee and Indemnity before you sign it. * You can refuse to sign this Guarantee and Indemnity. * There are financial risks involved in signing this Guarantee and Indemnity (for example, it may become necessary for you to sell your assets so that you can pay us). * You have the right to limit your liability under this Guarantee and Indemnity in accordance with the Credit Legislation (if it applies to this Guarantee and Indemnity) and as allowed by law. * You can request information about the transaction or the Guaranteed Agreement (including any existing facility with us to be refinanced by the new facility). * This Guarantee and Indemnity covers liability under a future credit contract to the extent the future credit contract (together with all other existing credit contracts secured by this Guarantee and Indemnity) is within a limit previously agreed in writing by you. |

**SCHEDULE**

|  |  |  |
| --- | --- | --- |
| **Lender** | Name: | BC Invest Loans Pty Ltd |
| **(*we*, *us* or *our*)** | ACN: | 646 785 211 |
|  | Address: | Level 1, 274 Coventry Street, South Melbourne VIC 3205 |
|  |  |  |
| **Program Manager** | Name: | BC Securities Pty Ltd  Australian Credit Licence 482240 |
|  | ACN: | 609 155 688 |
|  | Address: | Level 1, 274 Coventry Street, South Melbourne VIC 3205 |
|  | Email: | info@bcinvest.co |
|  |  |  |
| **Borrower** | Name: | <<BORDET1FULLNAMESAL>> ATF <<BORDET1TRUSTNAME>> |
|  | ACN: | <<BORDET1ACN>> |
|  | Address: | <<BORDET1ADDRESSLINE1>>, <<BORDET1SUBURB>> <<BORDET1STATE>> <<BORDET1POSTCODE>> |
|  | Email: | <<BORDET1EMAILADDRESS>> |
|  |  |  |
| **Guarantor** | Name: | <<Guarantor2Fullname>> |
| **(*you*)** | Address: | <<GUARANTOR2ADDRESSLINE1>>, <<Guarantor2Suburb>> <<GUARANTOR2STATE>> <<GUARANTOR2POSTCODE>> |
|  | Email: | <<GUARANTOR2EMAILADDRESS>> |
|  |  |  |
| **SMSF Fund** | Trust name: | <<BORDET1TRUSTNAME>> |
|  | Trust deed: | A deed dated <<bordet1trustdate>> establishing the SMSF Fund |
|  |  | |
| **Bare Trust** | Trust name: | **<<GUARANTOR1TRUSTNAME>>** |
|  | Trust deed: | A deed dated **<<GUARANTOR1TRUSTDATE>>** between <<GUARANTOR1FULLNAME>> (***the Bare Trustee***) and the Borrower |
|  |  |  |
| **Mortgaged Property** | <<PROPDETALLSECADD>> | |
|  |  |  |
| **Guaranteed Agreement** | The Loan Agreement dated on or about the date of this Guarantee and Indemnity between the Lender and the Borrower and any replacement of it. | |
|  |  |  |
| **Guaranteed Limit** | The Amount of Credit under the Guaranteed Agreement plus any interest, costs and expenses (including all reasonable Enforcement Expenses in enforcing this Guarantee and Indemnity). | |
| **Special Conditions** | The following special conditions apply to this Guarantee and Indemnity. To the extent there are any inconsistencies between these special conditions and the terms and conditions of the Guarantee and Indemnity, these special conditions prevail.   1. **No indemnity**   Despite any other provision of this Guarantee and Indemnity or any right conferred or implied by law or statute, your rights against the Borrower in respect of any payment, cost, expense or anything else arising from or relating to this Guarantee and Indemnity are limited to the Mortgaged Property. For example, if you pay any money to us in response to a demand for payment, you will only be entitled to recourse against the Mortgaged Property and will not be entitled to claim that amount back from any other asset of the Borrower.   1. **Own enquiries**   We make no warranty or representation in relation to the structure under which the Bare Trustee and the SMSF Fund has acquired the Mortgaged Property. You acknowledge that you have made your own enquiries in relation to the structure and have no claim whatsoever against us in relation to any aspect of the structure. For example, you have no claim against us if the entry of the structure, this document, or the transaction reflected by this document makes the SMSF Fund non-complying with any law or regulation. We can enforce this document in full despite any such non-compliance. | |

**ACCEPTANCE BY GUARANTOR**

By signing this Guarantee and Indemnity you:

* request us to enter into the Guaranteed Agreement or not to immediately enforce the Guaranteed Agreement and you agree to be bound by the terms of the Guarantee and Indemnity;
* acknowledge that:
  + before signing this Guarantee and Indemnity you received and read a copy of the Guaranteed Agreement, each mortgage and other security given or to be given by you and the Information Statement: “Things you should know about Guarantees”;
  + you fully understand the nature and effect of this Guarantee and Indemnity and the consequences of entering into it and that you were given the opportunity to seek independent legal and financial advice and that we recommended that you obtain such advice; and
  + you understand that the mortgaged or mortgaged property will be at risk if you default under this Guarantee and Indemnity.

**Warning: If the debtor is under 18 years old, the courts might not let you sue the debtor if you have to pay amounts under this guarantee and indemnity (ie you may not be entitled to an indemnity against the debtor).**

**Executed as an agreement on \sig2date\**

**<<rs\_directors>>**

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by <<GUARANTORNAME>> | )  ) | \signature1\ |
|  |  | <<GUARANTORNAME>> |

**<<es\_directors>>**

|  |  |  |
| --- | --- | --- |
| **EXECUTED** on behalf of **BC INVEST LOANS PTY LTD**: | )  ) |  |
|  |  | David Hinde – Director |

# DEFINITIONS & INTERPRETATION

## Words with special meanings

Unless the context otherwise requires, terms in this Guarantee and Indemnity are defined as follows.

**Amount of Credit** means the amount we agree to lend the Borrower under the Guaranteed Agreement.

**Australian dollars** means the currency of the Commonwealth of Australia.

**Bare Trust** means the trust specified in the Schedule as “Bare Trust”.

**Bare Trustee** means the person specified in the Schedule as “Bare Trustee”.

**Borrower** means the person specified in the Schedule as “Borrower”.

**Business Day** means a day other than a Saturday, Sunday or public or bank holiday in the state in which the Mortgaged Property is located.

**Collateral Security** means any Security Interest, Guarantee (other than this Guarantee and Indemnity) or other document or agreement at any time created or entered into as security for payment of the Guaranteed Money

**Credit Legislation** means:

### the *National Consumer Credit Protection Act* 2009 (Cth), as amended from time to time;

### the National Consumer Credit Protection Regulations 2010 (Cth), as amended from time to time; and

### the National Credit Code, contained in Schedule 1 of the National Consumer Credit Protection *Act 2009* (Cth), as amended from time to time.

**Enforcement Expenses** means any expenses which we reasonably incur in enforcing or preserving our rights under this Guarantee and Indemnity including but not limited to:

### any real estate agent fees, commissions and marketing costs;

### any costs incurred in preserving or maintaining the Mortgaged Property;

### any insurances, rates and taxes payable in respect of the Mortgaged Property; and

### any collection and recovery expenses,

### and any GST payable in respect thereof.

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

**GST** means any goods or services tax, value­ added tax, consumption tax or similar tax including as that term is defined in the *A New Tax System (Goods and Services tax) Act 1999* (Cth).

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

**Guarantee and Indemnity** means this guarantee and indemnity including the Schedule.

**Guaranteed Agreement** means the agreement described as “Guaranteed Agreement” in the Schedule. It also includes any variation to that agreement and any future credit contract between the Borrower and us and, if this Guarantee and Indemnity is regulated by the Credit Legislation, you have acknowledged in writing that it is to be a guaranteed agreement to which this Guarantee and Indemnity extends.

**Guaranteed Limit** means the amount specified as “Guaranteed Limit” in the Schedule which may be varied at any time and from time to time in accordance with the Credit Legislation (if it applies) and the terms of this Guarantee and Indemnity.

**Guaranteed Money** means all money which, at any time and for any reason and on any basis (whether or not contemplated by you, the Borrower or us at the date of this Guarantee and Indemnity):

### the Borrower is or becomes actually or contingently liable to pay to us or for our account;

### comprises financial accommodation provided by us to the Borrower (or to any other person at the request or on behalf of the Borrower or with the consent (express or implied) of the Borrower);

### we and the Borrower agree will form part of the Guaranteed Money;

### we are entitled to debit to the Borrower's account or for which the Borrower is liable to pay by reason of any act or omission of the Borrower, or

### reasonably foreseeably may fall within paragraphs (a), (b), (c) or (d) above at any time,

### irrespective of:

### (i) whether the liability of the Borrower is:

### (A) alone, or several or joint with any other person;

### (B) personal;

### (C) incurred as principal debtor or in any other capacity including as surety; or

### (D) ascertained or unascertained;

### (ii) whether we are:

### (A) the original obligee or an assignee deriving from it; or

### (B) the original secured party or an assignee deriving from it,

### and irrespective of:

(C) when the assignment took place; and

(D) whether the Borrower had notice of or consented to the assignment; and

(iii) whether the liability of the Borrower was incurred on its own behalf or as trustee of any trust.

**Guarantor** means anyone who at any time guarantees to us the payment of all or any part of the Guaranteed Money, and includes the guarantor(s) specified in the Schedule.

**Insolvency** **Event** means the happening of any one or more of the following events:

### a person is unable to pay their debts as they fall due or is unable to certify that they are able to pay their debts as they fall due;

### a person commits an act of bankruptcy;

### an application is made to a court for an order, or an order is made appointing a liquidator or provisional liquidator in respect of a person (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);

### proceedings are initiated with a view to obtaining an order for the winding up or similar process of a person, an order is made or any effective resolution is passed for the winding up of a person, or a person is deregistered or dissolved;

### except to reconstruct or amalgamate while solvent on terms approved by us, a person enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement, or composition with, or assignment for the benefit of, all or any class of their creditors, or they propose a reorganisation, moratorium or other administration involving any class of their creditors;

### a controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to or over, or takes possession of, all or a substantial part of the assets or undertaking of a person;

### a person is, or is deemed or presumed by law or a court to be, insolvent;

### a person takes any step to obtain protection, or is granted protection, from their creditors, under any applicable legislation, or an administrator is appointed to a person;

### something analogous or having a substantially similar effect to any of the events specified above happens in respect of a person under the law of any applicable jurisdiction.

**Program Manager** means the person specified in the Schedule as “Program Manager”.

**Mortgaged** **Property** means the property specified as “Mortgaged Property” in the Schedule.

**Schedule** means the schedule that is attached to and forms part of this Guarantee and Indemnity.

**Security Interest** means any interest held as security for the payment of a monetary obligation or the performance of any other obligation, including:

### a mortgage, charge, encumbrance, lien, pledge or hypothecation;

### a bill of sale, assignment, title retention arrangement, trust or power held as security; and

### anything that is a *security interest* as defined under the *Personal Property Securities Act 2009* (Cth).

**SMSF Fund** means the self-managed superannuation fund specified in the Schedule as “SMSF Fund”.

**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 any of them except if imposed on our net overall income.

**Trust** means any and each trust of which you are the trustee (whether or not disclosed to us) including the trust (if any) described in the Schedule, and **Trust Deed** means the deed of trust or settlement constituting the Trust.

**we** means the person described in the Schedule as “Lender” and **us** and **our** have corresponding meanings.

**you** means the person described in the Schedule as “Guarantor” and **your** has a corresponding meaning.

## Interpretation

In this Guarantee and Indemnity, unless the context indicates otherwise:

### headings are only for convenience and do not affect interpretation;

### a word or expression indicating the singular includes the plural, and vice versa;

### examples are descriptive only and are not exhaustive;

### reference to any thing includes a part of the thing;

### reference to a party includes the party’s personal representatives, successors, transferees and permitted assigns;

### if the day on or by which any thing must be done is not a Business Day, then the thing must be done on or by the next Business Day;

### a rule of construction does not disadvantage a party just because that party prepared the agreement;

### reference to an agreement, document or instrument includes any legally enforceable arrangement or understanding (whether or not in writing). It also includes all amendments, supplements to, replacements of, or novations of them;

### reference to a “liability” or “obligation” includes a present, future, actual, prospective or contingent liability or obligation. It may be incurred alone or with any other person. The amount may or may not be able to be determined;

### a reference to money is a reference to Australian dollars unless expressly stated otherwise;

### reference to a person includes a body corporate, partnership, unincorporated joint venture, and a Government Authority;

### a reference to law includes a reference to common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re­ enactments or replacements of any of them);

### words defined in the Credit Legislation have the same meaning when used in this Guarantee and Indemnity;

### where any word or expression has a special meaning, any other part of speech or other grammatical form of that word or expression has a corresponding meaning;

### an agreement, representation or warranty on the part of two or more persons binds them jointly and severally; and

### an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally.

## Binding agreement

This Guarantee and Indemnity binds each person who signs as Guarantor even if another person who was intended to sign does not sign it or is otherwise not bound by it.

# Guarantee and indemnity

## Consideration

This Guarantee and Indemnity is entered into in consideration of us providing or continuing to provide financial accommodation to the Borrower or not immediately enforcing rights against the Borrower at your request.

## Guarantee

You unconditionally and irrevocably guarantee to us:

### the due and punctual payment of the Guaranteed Money; and

### the due and punctual observance and performance of the Borrower’s obligations under the Guaranteed Agreement.

If the Borrower does not pay the Guaranteed Money on time and in accordance with any arrangement under which it is expressed to be owing, then you agree to pay the Guaranteed Money to us on demand.

## Indemnity

As an independent and principal obligation, you unconditionally and irrevocably indemnify us against any loss or liability sustained by us (including all charges, costs and expenses incurred by us) directly or indirectly in connection with:

### any failure of the Borrower to duly and punctually pay us the Guaranteed Money;

### any liability of the Borrower to pay the Guaranteed Money being or becoming void or otherwise unenforceable for any reason (including as a result of any legal limitation, disability or incapacity affecting any person), irrespective of whether we knew or ought to have known of the relevant facts or circumstances;

### the Guaranteed Money (or money which, if recoverable, would have been Guaranteed Money) being or becoming unrecoverable from you for any reason, irrespective of whether we knew or ought to have known of the relevant facts or circumstances;

### the occurrence of an Insolvency Event in relation to the Borrower; or

### any payment we are obliged or agree to pay to a trustee in bankruptcy or liquidator (or bankrupt person or insolvent corporation) in connection with a payment by you or the Borrower.

## Demand

You must pay us on demand:

### the Guaranteed Money under clause 2.2 (whether or not we have made a demand on the Borrower); and

### an amount equal to the amount of any loss or liability in respect of which you have given an indemnity under clause 2.3 (whether or not we have made a demand on the Borrower).

A demand under this clause 2.4 may be made at any time and from time to time.

## Limit on your liability

### By signing this Guarantee and Indemnity, you could become liable to pay us:

### under the guarantee in clause 2.2;

### under the indemnity in clause 2.3;

### under clauses 4.2, 4.3, 4.4, 4.6 and 6.4; and

### interest under clause 4.5.

### However, the maximum amount we can recover from you is the Guaranteed Limit (if any).

## Ending this agreement

Except to the extent that you have a right conferred under the Credit Legislation, you cannot otherwise withdraw from, end or limit this Guarantee and Indemnity.

# Nature of obligations

## Principal obligations

Each of your obligations under this Guarantee and Indemnity is:

### a principal obligation imposed on you as principal debtor and is not to be regarded as ancillary or collateral to any other right or obligation; and

### independent of and not affected by or in substitution for any Collateral Security or any obligation of any person.

## No recourse to Collateral Security or other rights

This Guarantee and Indemnity is enforceable against you irrespective of whether:

### recourse has first been had to any Collateral Security;

### demand has been made on or notice is given to the Borrower or any other person;

### any other enforcement action has been taken against any person (including the Borrower or another Guarantor); or

### any of the events described in clause 6.1 has occurred.

## Continuing obligations

Your obligations under this Guarantee and Indemnity:

### are a continuing guarantee and indemnity;

### extend to the present and any future balance of the Guaranteed Money; and

### remain in full force and effect until a final discharge of this Guarantee and Indemnity is provided to you,

notwithstanding any settlement of account, intervening payment or other thing.

## Operation of indemnities

The indemnity in clause 2.3 and the other indemnities in this Guarantee and Indemnity are continuing obligations, independent of your other obligations under this Guarantee and Indemnity. They survive the payment of all amounts recoverable under this Guarantee and Indemnity and continue even after those other obligations end. It is not necessary for us to incur any expense or make any payment to any person before enforcing a right of indemnity conferred by clause 2.3 or by the other indemnities in this Guarantee and Indemnity.

## Increases in Guaranteed Money

### If this Guarantee and Indemnity is not regulated by the Credit Legislation, your obligations under this Guarantee and Indemnity extend to any increase in the Guaranteed Money as a result of any change to the Guaranteed Agreement or the occurrence of any other thing, irrespective of whether you are aware of or have consented to or are given notice of any such change or of that occurrence. As such, your liability under this Guarantee and Indemnity may exceed the Guaranteed Limit without your agreement.

### If this Guarantee and Indemnity is regulated by the Credit Legislation, your obligations under this Guarantee and Indemnity may extend to any increase in the Guaranteed Money as a result of any change to the Guaranteed Agreement or a future credit contract between the Borrower and us but only if you agree in writing. As such, your liability under this Guarantee and Indemnity cannot exceed the Guaranteed Limit without your agreement.

## Contingent amounts

You acknowledge that the Guaranteed Money may include an amount which is contingently owing or which may become owing in the future and that, so long as we are entitled to make demand on the Borrower (without being obliged to make that demand), you must pay us an amount equal to any contingent or future amount included in the Guaranteed Money notwithstanding that such contingent or future amount may not have fallen due as at the date of any demand.

## Joint and several liability

### You are liable for all obligations under this Guarantee and Indemnity both separately on your own and jointly with any one or more other persons named as a Guarantor.

### If there is more than one Guarantor, you are bound by this Guarantee and Indemnity even if the other Guarantors do not sign this Guarantee and Indemnity or any other Guarantee or are otherwise not bound by that other Guarantee.

# Additional amounts Payable

## Your costs

You must pay for anything which you must do under this Guarantee and Indemnity.

## Enforcement expenses

You must pay us on demand:

### our reasonable costs (including advisers and legal costs on a full indemnity basis and all reasonable Enforcement Expenses) in arranging, administering (including giving and considering consents, variations, discharges and releases and producing title documents or enforcing or attempting to enforce or taking any action within our rights), terminating and enforcing this Guarantee and Indemnity;

### all reasonable Enforcement Expenses if you default under this Guarantee and Indemnity; and

### all taxes, fees and charges payable in connection with this Guarantee and Indemnity and any transaction under it, and any interest, penalties, fines and expenses in connection with them.

You must pay these amounts to us on demand. We may debit any of these amounts to any account you have with us after we have given you notice.

## Indemnity

### You indemnify us against, and you must pay us on demand for, liability, loss or costs (including consequential or economic loss) we suffer or incur:

(i) if you default under this Guarantee and Indemnity; or

(ii) in connection with any person exercising, or not exercising, rights under this Guarantee and Indemnity.

### You must pay us an amount equal to any liability, loss or costs (including consequential or economic loss) of a kind referred to in clauses 4.3(a) suffered or incurred by any of our employees, officers, agents, attorneys or contractors.

## Goods and Services Tax

### You must pay us all of our reasonable costs in connection with this Guarantee and Indemnity that are increased as a direct or indirect result of the imposition of GST. If:

### we reasonably decide that we are liable to pay GST on a supply made in connection with this Guarantee and Indemnity; and

### we certify that we have not priced the supply to include GST,

### then you must pay us an additional amount on account of GST, such amount to be calculated by multiplying the GST-exclusive consideration by the prevailing GST rate.

### You must pay these amounts to us on demand.

## Interest

### You agree to pay interest (at the highest rate agreed between us and the Borrower under the Guaranteed Agreement) on:

(i) any amounts payable by you which are not otherwise incurring interest; and

(ii) any amounts under this Guarantee and Indemnity which are not paid on the due date or if no date is stipulated, when required by us.

### Interest accrues daily from (and including) the due date (or if no due date, the date stipulated by us) up to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.

### You agree to pay interest under this clause 4.5 on demand from us.

### Each month (or other period we choose), we may add to the amount you owe us any interest under this clause 4.5 which has not been paid. You will then be liable for interest under this clause 4.5 on the total amount.

### If any amount you must pay us under this Guarantee and Indemnity becomes covered by a court order, you must pay interest on that amount as a separate obligation. The interest accrues from (and including) the date that we first ask you for the amount until (but excluding) that date that amount is paid. This obligation is not affected by the court order. The rate is the rate in clause 4.5(a) or the rate in the court order (whichever is higher). You must pay interest under this clause 4.5(e) on demand from us.

## Judgment, order or proof of debt

### If a judgment, order or proof of debt in connection with the Guaranteed Money is expressed in another currency other than that in which the Guaranteed Money is due, then you indemnify us against, and you must therefore pay us on demand for:

### any difference arising from converting the other currency if the exchange rate we use for converting the other 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 acceptable of proof of debt; and

### any costs, charges or expenses arising from or in connection with the currency conversion.

You must pay these amounts to us on demand. We may debit any of these amounts to any account you have with us after we have given you notice.

# PaymentS

## Method of payment

You must make all payments under this Guarantee and Indemnity:

### by transfer of immediately available funds in Australian dollars;

### by 4-00PM Australian eastern standard time (any payment received by us after 4-00PM Australian eastern standard time are treated as received on the next Business Day);

### to the account specified by us or as we otherwise direct from time to time; and

### without any counterclaim, deduction, withholding or set-off unless the law requires you to do so.

If any payment is dishonoured, the payment will be treated as not having been made.

## Application of payments

Unless otherwise required by law:

### we may apply any money received from, or for, the Borrower towards paying any part we determine of the amounts the Borrower owes us (including paying an amount you have not guaranteed); and

### we may apply any money received from you under this Guarantee and Indemnity in satisfaction of such part of the Guaranteed Money (or any other money owing under this Guarantee and Indemnity) as we may determine in our discretion. Without limitation, we may apply money first in satisfaction of indemnity or reimbursement obligations.

## Cleared funds

In applying any money towards the satisfaction of the Guaranteed Money under clause 5.2, payments will only be credited when funds are cleared and which are not subject to any set-off or claim.

## Suspense account

### We may place in a suspense account any payments we receive from you for as long as we consider appropriate and we are not required to apply such payments in or towards payment or satisfaction of the Guaranteed Money.

### Subject to clause 5.4(a), if, at any time, we receive any or all of the Guaranteed Money and that money is not then due for payment, we may retain that amount and hold it in an interest bearing account and use it (and any net interest after tax) to pay the Guaranteed Money owing under the Guaranteed Agreement when it becomes due for payment.

## Surplus funds

We must pay any money remaining after the Guaranteed Money is paid either to you or to another person entitled to it. We do not pay you or any other person interest on any money remaining after the Guaranteed Money is paid.

## Currency

If we receive a payment in a currency which is different from the currency in which that payment is due, then we may convert the amount received into the due currency on the day and at such rates as we consider appropriate. We may make any number of currency conversions into any number of currencies in order to do so. You satisfy your obligation to pay in the due currency only to the extent of the amount of the due currency ultimately purchased by us after deducting any costs and expenses incurred in connection with the conversion.

# Preservation of Our rights

## Our rights are protected

Your liabilities and our rights in connection with this Guarantee and Indemnity will not be affected by any act or omission by us or by anything else which might otherwise have that effect including:

### if we could have exercised our rights under this Guarantee and Indemnity or under the Guaranteed Agreement before, but we did not do so or we were slow in doing so; or

### if any other person who was intended to guarantee the Borrower’s obligations under the Guaranteed Agreement does not do so or does not do so effectively; or

### if we release the Borrower from its obligations under the Guaranteed Agreement or if we give the Borrower a concession, such as more time to pay; or

### if we release any person who guarantees the Borrower’s obligations under the Guaranteed Agreement (including any other Guarantor); or

### if the obligations of any person who guarantees the Borrower’s obligations under the Guaranteed Agreement are unenforceable; or

### if the Borrower opens another account with us; or

### if we release, lose the benefit of or do not obtain any security; or

### if we fail to register any security which could be registered; or

### if any rights in connection with the Guaranteed Agreement are assigned; or

### if an Insolvency Event occurs in connection with any person (including you or the Borrower).

## No merger

This Guarantee and Indemnity does not merge with, or adversely affect, and is not adversely affected by:

### any other guarantee, indemnity, mortgage, charge or other security, or right or remedy to which we are entitled; or

### a judgment or order which we obtain against you in respect of an amount payable under this Guarantee and Indemnity.

### We can still exercise our rights under this Guarantee and Indemnity as well as under the judgment, order, other guarantee, indemnity, mortgage, charge, other security, right or remedy.

## Your rights are suspended

### Until we have received payment or satisfaction of all of the Guaranteed Money or we have given prior written consent, you must not:

### (i) assert as against us, the Borrower or any other Guarantor any right of contribution, indemnity or subrogation or otherwise claim or receive the benefit of or enforce any Security Interest or Guarantee for the payment of the Guaranteed Money;

(ii) without limiting clause 6.3(b), exercise any right of proof or claim or receive the benefit of any distribution, dividend or payment if an Insolvency Event occurs in connection with the Borrower;

(iii) raise any set off, counterclaim or defence in reduction or discharge of your obligations under this Guarantee and Indemnity; or

(iv) otherwise exercise any right which you may have which is inconsistent with your obligations or our rights under this Guarantee and Indemnity, the Guaranteed Agreement or any other associated documents.

### If an Insolvency Event occurs in connection with the Borrower, you irrevocably and unconditionally authorise us to exercise any right of proof for all money which you have paid to us under this Guarantee and Indemnity on or for the account of the Borrower until we have received payment or satisfaction of the Guaranteed Money in full.

## Reinstatement of rights

Under law, a trustee in bankruptcy or liquidator may ask us to refund a payment we have received from the Borrower in connection with the Guaranteed Agreement. To the extent that we are obliged to, or we agree to, make a refund, we may treat the payment as if it had not been made. We are then entitled to invoke our rights against you under this Guarantee and Indemnity as if the payment had never been made.

# Your rights

## Ending this agreement

You may end your liability under this Guarantee and Indemnity at any time if you pay us the outstanding liability of the Borrower at that time under each Guaranteed Agreement and all amounts payable by you under this Guarantee and Indemnity. For this purpose, the Borrower’s outstanding liability includes any amount which we determine to be a future or contingent liability and includes all liability whether or not we are able to enforce payment by the Borrower.

## Release

In all other circumstances, we will release you from this Guarantee and Indemnity when we have received the lesser of the amounts owing under all Guaranteed Agreements or the Guaranteed Limit and we are satisfied that:

### we will not have to repay or refund any money;

### you, the Borrower and any other Guarantor have no continuing liability to us; and

### there is no prospect of the Borrower owing us any money in the future.

## Limiting this agreement

You may limit your liability under this Guarantee and Indemnity by writing a notice to us except that we do not have to accept such a limit if:

### it is below the Borrower’s liability under the Guaranteed Agreement at the time plus any interest or fees and charges which may be subsequently incurred in respect to that liability; or

### we are obligated to make further advances or would be unable to secure the present value of an asset which is security for the Guaranteed Money.

# representations and Warranties

## Acknowledgements

You acknowledge that:

### we have recommended to you that you obtain independent legal and financial advice about the effect and consequences of this Guarantee and Indemnity;

### you have read this Guarantee and Indemnity and understood the effect and consequences of this Guarantee and Indemnity and your obligations under this Guarantee and Indemnity; and

### you are responsible for making yourself aware of the financial position of the Borrower and any other person who guarantees the Guaranteed Money.

## Representations

You represent and warrant to us that each of the following is true and correct and not misleading:

### neither you nor, if you are a corporation, any director or other person breaches any law or any obligation to another person by signing this Guarantee and Indemnity;

### if you are a corporation, you have been incorporated in accordance with the laws of the place of your incorporation and that you validly exist under those laws;

### you have the power to carry on your business and you are not in breach of any law or obligation;

### you have in full force and effect the power and authorisations necessary for you to enter into this Guarantee and Indemnity, to comply with your obligations and exercise your rights under it, and allow this Guarantee and Indemnity to be enforced;

### your obligations under this Guarantee and Indemnity are valid and binding and are enforceable against you in accordance with its terms;

### you benefit by entering into this Guarantee and Indemnity;

### an Insolvency Event has not occurred concerning you;

### you have not taken and will not take any Security Interest from the Borrower in connection with this Guarantee and Indemnity or the Guaranteed Money;

### there is no pending or threatened legal proceeding affecting you or any of your assets before a court, authority, commission or arbitrator except those in which a decision against you (either alone or together with other decisions) would be insignificant;

### you have disclosed in writing to us all facts relating to you, this Guarantee and Indemnity and all things in connection with it which are material to the assessment of the nature and amount of risk undertaken by us in entering into any transaction relating to this Guarantee and Indemnity and doing anything in connection with this Guarantee and Indemnity;

### all information supplied to us in connection with this Guarantee and Indemnity is true and correct and not false or misleading in any way;

### since the date any information was given to us relating to this Guarantee and Indemnity there has been no change in your financial circumstances which may have a material adverse effect on your ability to meet your obligations under this Guarantee and Indemnity; and

### you have not entered into this Guarantee and Indemnity on the basis of any representations or warranties made by us or any person on our behalf.

## Ongoing obligation

You must tell us whenever anything happens which would mean you could not truthfully repeat all the representations and warranties in clause 8.2 (unless we consent to that thing happening).

## Our reliance

You acknowledge that we have relied on the correctness of the representations and warranties contained in clause 8.2 in entering into this Guarantee and Indemnity and will continue to do so in dealing with you.

# TRUSTS

## Application

### This clause 9 applies if you enter into this Guarantee and Indemnity as the trustee of a Trust (whether or not we know about the Trust).

### This Guarantee and Indemnity is binding on you in your personal capacity and in your capacity as trustee of the Trust and a reference to you in this Guarantee and Indemnity is a reference to you in your personal capacity and in your capacity as trustee of the Trust.

## Entering into this document

You enter into this Guarantee and Indemnity:

### as sole trustee of the Trust;

### not only as trustee of the Trust but also so as to bind yourself personally; and

### with the consent of the beneficiaries and for the benefit of all beneficiaries of the Trust.

## Representations

### You represent and warrant to us that each of the following is true and correct and not misleading:

### you are empowered by the Trust Deed to enter into this Guarantee and Indemnity and perform your obligations under it;

### all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the Trust Deed for the entry into and performance of your obligations under this Guarantee and Indemnity;

### this Guarantee and Indemnity is for the benefit of the Trust;

### you are the sole trustee of the Trust;

### no property of the Trust has been resettled or set aside or transferred to any other trust or trusts;

### the Trust has not been terminated, nor has the date or any event for the vesting of the assets of the Trust occurred; and

### your right of indemnity out of, and lien over, the assets of the Trust has not been limited in any way and the assets of the Trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the trustee has a right to be indemnified out of the assets of the Trust.

## Ongoing obligation

You must tell us whenever anything happens which would mean you could not truthfully repeat all the representations and warranties in clause 9.3 (unless we consent to that thing happening).

# Disclosure and Privacy

## Specific disclosure by us

You irrevocably consent and agree to us providing any information concerning you, this Guarantee and Indemnity and the Guaranteed Money as we consider appropriate:

### to any of our related parties (as that expression is defined in the *Corporations Act 2001* (Cth));

### to any person to whom we assign or transfer (or may potentially assign or transfer) all or any of our rights or obligations under this Guarantee and Indemnity;

### to the Borrower or to any other Guarantor;

### to any employee, banker, lawyer, auditor or other professional adviser or consultant to us;

### to any person who is a beneficiary or potential beneficiary of, the holder or potential holder of, a Security Interest over our rights under the Guaranteed Agreement; or

### to rating agencies to the extent required by them.

## General disclosure by us

We may disclose any information:

### that is publicly available;

### that we are under a public duty to disclose; or

### for the purpose of registering and maintaining any financing statement or financing change statement relating to our Security Interests.

# Notices

## Authority to sign

Any notice, statement or other communication to be given or demand to be made on you in connection with this Guarantee and Indemnity must be in writing and may be effectively signed on our behalf if it is executed by us, any of our officers, our solicitor or our attorney.

## Delivery of notices by us

We may give you any notice, statement, demand or other communication connected with this Loan Agreement by:

### giving it to you personally;

### leaving it at your last known residential or business address;

### posting it to your last known residential or business address;

### by electronic means to your last known electronic address; or

### any other means permitted by law.

## Delivery of notices by you

You may give any notice, statement, demand or other communication to us by:

### giving it personally to us or one or our employees;

### posting it to our office at our address as specified in the Schedule;

### by electronic means to our email address as specified in the Schedule; or

### any other means permitted by law.

## Electronic Communications

Subject to the Credit Legislation if it applies, you consent to any notice, statement, demand or court document connected with this Guarantee and Indemnity being given to you by electronic means, including any documents that would otherwise require personal service in accordance with the relevant court rules in force in the jurisdiction in which the Mortgaged Property is located. This means that any notice, statement, demand or court Guarantee and Indemnity Agreement may no longer be given in paper form, and you must regularly check your electronic communications for notices. You may withdraw this consent at any time in writing.

## Service of notices

Any notice, statement or demand:

### if given personally, will be deemed served at the time it is delivered;

### if left at your residential or business address, will be deemed served at the time it is delivered;

### if posted, will be deemed served when it is received in the ordinary course of post;

### if sent by electronic means, will be deemed served on conclusion of transmission;

### if sent by any other means permitted by law, will be deemed served at the time specified by the relevant law, and if the relevant law does not specify a time, then when it is received by you.

## Electronic signature and exchange

The parties agree that the execution of this Guarantee and Indemnity may be effected by electronic signature and exchange of this document may be effected by electronic means.

If you execute and exchange this Guarantee and Indemnity in accordance with this clause 11.6:

### the exchange by electronic means will be deemed to be an effective delivery of an originally executed counterpart; and

### you will still be obliged to deliver an originally executed counterpart, but the failure to do so will not affect the validity or effectiveness of this Guarantee and Indemnity.

## Appointment of service agent

### If you do not live in Australia or have a registered address in Australia, you must ensure that at all times during the term of the loan a person or entity acceptable to us is validly appointed as your agent to accept notices or court documents on your behalf and consents to act as your agent. Service may be affected on your agent in accordance with the relevant court rules in force in the jurisdiction in which the Mortgaged Property is located or in the manner agreed in clauses 11.4 and 11.5.

# General Provisions

## Change of details

You must notify us in writing of any change in your name, your address or your email address immediately specifying the details of the change.

## Approvals and consents

Any authority, consent or other thing to be given, made or exercised by us under this Guarantee and Indemnity may be done, given or made how and when the Lender decides and on such terms and conditions as we consider appropriate, but will not be unreasonably withheld.

## Enforcing rights

We may claim against you under this Guarantee and Indemnity before we enforce any of our rights or remedies:

### against the Borrower or any other person; or

### under another document such as another Security Interest.

### If we have more than one guarantee and indemnity or Security Interest, we may enforce them in any order we choose.

## Certificates

A certificate signed by us or on our behalf as to a matter or as to an amount payable to us in connection with this Guarantee and Indemnity is conclusive and binding on you as to the amount stated in it and any other matter of a factual nature unless the matter or amount is capable of determination by us in our discretion, in which case we will not act arbitrarily, capriciously or unreasonably.

## Further assurances

You must do anything we reasonably ask (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) to:

### ensure that this Guarantee and Indemnity and any Security Interest is not void, voidable or otherwise unenforceable by us in accordance with their terms;

### ensure that a Security Interest is enforceable, perfected (including registration and, where possible, by control in addition to registration under the PPSA) and otherwise effective;

### stamp and enable us to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by us;

### enable us to exercise our rights in connection with the Security Interest; and

### authorise us to sign any documents on your or their behalf and do anything else we reasonably consider appropriate to effect a transfer or assignment under clause 12.11.

## No waiver

No failure to exercise, and no delay in exercising, our rights, powers or privileges under this Guarantee and Indemnity operates as a waiver. No waiver of our rights, powers or privileges under this Guarantee and Indemnity is effective unless made in writing. We may exercise all of our rights at any time and more than once.

Our rights under this Guarantee and Indemnity do not merge in any judgement, and so we can, for example, take fresh proceedings if a judgment becomes stale.

## No obligation to marshal

We are under no obligation to marshal or appropriate in your favour or to apply, enforce or exercise:

### any Security Interest, Collateral Security or any other document or other instrument held by us; or

### any asset which we hold or may otherwise be entitled to receive or have a claim on.

## Tax

### If you are required to deduct any Tax from any payment under this Guarantee and Indemnity:

### (i) you must pay that amount to the appropriate Government Authority and promptly give us evidence of payment; and

### (ii) the amount payable is increased so that (after deducting that Tax and paying any Taxes on the increased amount) we receive the same amount we would have received had no deduction been made.

### If you are liable for any reason (including because you are resident of another country) for the payment of any Tax (including a withholding tax) or charge in respect of the amount of interest paid to us under this Guarantee and Indemnity:

### (i) you must pay that amount to the appropriate Government Authority and promptly give us evidence of payment; and

### (ii) where because of your failure to make that payment we assume liability or we are for whatever reason liable for that payment, you will upon demand reimburse or indemnify us for any amount paid, that amount will be inclusive of any other amounts we are liable for (including without limitation any fines or penalties imposed) in making that payment.

## Severability

If any provision of this Guarantee and Indemnity is illegal, invalid or unenforceable in whole or in part, the affected provisions will cease to have effect, but the balance of this Guarantee and Indemnity will remain valid and enforceable, and we may by notice vary this Guarantee and Indemnity so that the provisions are no longer invalid.

## Appointment of agents and others

### We may at any time appoint persons to act as our agent, manager, servicer, broker, aggregator, intermediary or in other any other capacity to perform similar or identical functions.

### Without limiting the generality of clause 12.10(a), we appoint the Program Manager to act as our agent in relation to this Guarantee and Indemnity. The Program Manager may exercise our rights under this this Guarantee and Indemnity.

### All exemptions or limits on liability and all indemnities under this Guarantee and Indemnity that apply to us, also apply to any agent, manager, servicer or other person appointed under clause 12.10(a) or 12.10(b) and their employees.

## Assignment

We may assign, novate or otherwise deal with our rights and obligations under this Guarantee and Indemnity and any Security Interest. We do not need your consent to do this. You must sign anything and do anything we reasonably require to enable any dealing with this Guarantee and Indemnity and any Security Interest. Any dealing with our rights does not change your obligations under this Guarantee and Indemnity in any way.

You may not assign, novate or otherwise deal with your rights or obligations under this Guarantee and Indemnity and any Security Interest.

We may disclose any information about you, this Guarantee and Indemnity, or any Security Interest to anybody involved in an actual or proposed assignment, novation or dealing by us with our rights under this Guarantee and Indemnity.

## Obligations and rights unaffected

Any present or future law that would otherwise vary your obligations under the Guarantee and Indemnity is excluded (to the extent allowed by law) if it affects our rights or remedies adversely to us.

## Cumulative rights

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

## Governing law and jurisdiction

This Guarantee and Indemnity is governed by and interpreted in accordance with the laws for the time being in force in the State in which the Mortgaged Property is located. You submit to the non-exclusive jurisdiction of the courts of that place.

## Variations

Unless specified otherwise in this Guarantee and Indemnity, an amendment or variation to this Guarantee and Indemnity is not effective unless it is in writing and signed by the parties, which the parties agree may be effected in accordance with clause 11.6.

## Credit Legislation

### This clause 12.16 applies only to the extent that this Guarantee and Indemnity is regulated by the Credit Legislation.

### This Guarantee and Indemnity does not:

### exclude, modify or restrict any rights or duty given to, or imposed on, us or you under the Credit Legislation;

### require you to perform an obligation that is prohibited by the Credit Legislation; or

### give us any right which is prohibited by the Credit Legislation.